Supreme Court, U.S.
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No. ____

In the

Supreme Court of the United States

SCOTT ALLAN PULLINS, Petitioner

VS.

DISCIPLINARY COUNSEL, Respondent

ON PETITION FOR A WRIT OF CERTIORI
TO THE OHIO SUPREME COURT

PETITION FOR WRIT OF CERTIORI

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QUESTIONS PRESENTED

1. Did petitioner have a reasonable factual and legal basis for the statements made which would allow him to escape serious discipline?

2. Whether a state court decision suspending an attorney for publicly revealing the filing of a grievance against a judge violates the First and the Fourteenth Amendments?

3. Whether a state court decision suspending an attorney for statements made in an affidavit of disqualification filed against a judge violates the First and the Fourteenth Amendments and the right to an unbiased judge?

4. Is an attorney's Fourteenth Amendment Due Process rights violated when the judge who files a grievance against the attorney also serves as Chair of the Board of Commissioners on Grievances and Discipline that recommended the discipline to the Ohio Supreme Court?

5. Does severely restricting attorney speech harm the legal profession?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The Petitioner here and Respondent in the Ohio Supreme Court below is Scott Allan Pullins, a resident of the State of Ohio and formerly licensed to practice law in Ohio. Respondent here and Petitioner in the Ohio Supreme Court below is Disciplinary Counsel. Petitioner states that no parties are corporations.

Table of Contents

Opinions Below 1

Jurisdiction 1

Constitutional Provisions Involved 1

Statement of the Case 2

Reasons for granting the petition 3

I. Even if a constitutional violation is not proven, Petitioner's showing of a reasonable factual and legal basis for his statements should permit him to escape severe discipline 3

II. The Ohio Supreme Court's decision violates petitioner's fundamental first and fourteenth amendment rights and conflicts with this Court's decisions in *Landmark v. Virginia*, *New York Times v. Sullivan*, *Garrison v. Louisiana*, *In Re Sawyer*, and *Gentile v. State Bar of Nevada* 6

III. The participation of the grievant in this matter violated Petitioner's rights to a fair and unbiased judiciary and conflicted with this Court's decision in *Caperton v. A. T.*

Massey Coal Co......9

IV. Severely restricting attorney speech harms the legal profession.....10

V. Conclusion 12

Appendix A (Opinion of the Ohio Supreme Court).....1a

Appendix B (Recommendation of the Board of Commissioners on Grievances and Discipline).....1b

Cases and Law Review

Bose Corp. v. Consumers Union, 466 U.S. 485 (U.S. 1984).....9

Caperton v. A. T. Massey Coal Co., 129 S. Ct. 2252 (U.S. 2009).....10

Disciplinary Counsel v. Frost, 122 Ohio St. 3d 219 (Ohio 2009).....3

Disciplinary Counsel v. Pullins, 2010 Ohio 6241 (Ohio Dec. 23, 2010).....4

Gentile v. State Bar of Nev., 501 U.S. 1030 (U.S. 1991).....5

In re SAWYER, 360 U.S. 622 (U.S. 1959).....6

In re Cobb, 445 Mass. 452 (Mass. 2005).....14
Kistler v. Kistler (In re Disqualification of Jackson), 84 Ohio St. 3d 1233 (Ohio 1998).....12
Konigsberg v. State Bar of Cal., 353 U.S. 252, 269 (U.S. 1957).....14
Landmark Communications v. Va., 435 U.S. 829 (U.S. 1978).....7
Margaret Tarkington, A FREE SPEECH RIGHT TO IMPUGN JUDICIAL INTEGRITY IN COURT PROCEEDINGS, Boston College Law Review, Volume 51, Number 2, March 2010, 363.
.....11
Marshall v. Jerrico, Inc., 446 U.S. 238 (U.S. 1980)
.....11
New York Times Co. v. Sullivan, 376 U.S. 254 (U.S. 1964).....8
Office of Disciplinary Counsel v. Gardner, 99 Ohio St. 3d 416 (Ohio 2003).....3
Pheils v. Palmer, 2009 Ohio 6342 (Ohio Ct. App., Lucas County Dec. 4, 2009).....10
Snyder v. Phelps, 2011 U.S. LEXIS 1903 (U.S. Mar. 2, 2011).....13
St. Amant v. Thompson, 390 U.S. 727 (U.S. 1968).....8
Tarkington, Margaret, A Free Speech Right to Impugn Judicial Integrity in Court Proceedings (October 23, 2009). Boston College Law Review, Vol. 51, p. 363, 2010. Available at SSRN: http://ssrn.com/abstract=1493422.....13

Toledo Bar Ass'n v. Rust, 124 Ohio St. 3d 305, 313 (Ohio 2010).....5
United States v. Brown, 72 F.3d 25, 29 (5th Cir. La. 1995).....12
United States v. Grace, 461 U.S. 171, 185 (U.S. 1983).....14
Young v. United States ex rel. Vuitton Et Fils S. A., 481 U.S. 787, 809-810 (U.S. 1987).....10

Opinions Below

The Ohio Supreme Court's Opinion in *Disciplinary Counsel v. Pullins*, Slip Opinion No. 2010-Ohio-6241 is reproduced in Appendix A. The recommendations of the Board of Commissioners on Grievances and Discipline in case number 09-022 is reproduced in Appendix B.

Statement of Jurisdiction

The Opinion of the Ohio Supreme Court was issued on December 23, 2010. Petitioner evokes the Court's jurisdiction under 28 U.S.C. §1257(a).

Constitutional Provisions Involved

The First and Fourteenth Amendments of the Constitution of the United States of America:

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor

shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

On December 23, 2010 the Ohio Supreme Court suspended attorney Scott A. Pullins indefinitely, one step shy of permanent disbarment, primarily for statements made about a single judge in five affidavits of disqualification filed with the Chief Justice of the Ohio Supreme Court. The judge in question and the sole grievant in this case was Judge Otho Eyster, who throughout the disciplinary process served either as vice chair or as chair of the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court. This Board recommends discipline to the Ohio Supreme Court and this Court rarely departs from these recommendations.

This case marks the second time in the past year that the Ohio Supreme Court has suspended an attorney indefinitely for statements made in affidavits of disqualification. Mr. Pullins argued for a public reprimand or a stayed suspension based upon his contention that he had a reasonable factual and legal basis for his statements. He cited dozens of exhibits, testimony, extensive case law and statutory authority in his 90 page objections and brief. The Ohio Supreme Court, in an abrupt 26 page decision, overruled every one of these objections in a per curiam decision.

Reasons for Accepting this Writ

I. **Even if a constitutional violation is not proven, Petitioner's showing of a reasonable factual and legal basis for his statements should permit him to escape severe discipline.**

The Ohio Supreme Court has adopted an objective standard to determine whether a lawyer's statement about a judicial officer is made with knowledge or reckless disregard of its falsity. This standard assesses an attorney's statements in terms of what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances, and focuses on whether the attorney had a reasonable factual basis for making the statements, considering their nature and the context in which they were made.[1]

Under this standard, attorneys may still freely exercise free speech rights and make statements supported by a reasonable factual basis, even if the attorney turns out to be mistaken. But plainly, when an attorney levels accusations of judicial impropriety that a reasonable attorney would consider to be untrue, disciplinary sanctions are permissible.[2]

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[1] *Office of Disciplinary Counsel v. Gardner, 99 Ohio St. 3d 416 (Ohio 2003)*

[2] *Disciplinary Counsel v. Frost, 122 Ohio St. 3d 219 (Ohio 2009)*

Unfortunately, the Ohio Supreme Court has greatly expanded the definition of what is considered a false statement. In fact, in Count One the Ohio Supreme Court disciplined Mr. Pullins for truthfully revealing that he had filed a grievance against Judge Eyster. And in Count Seven the Ohio Supreme Court disciplined Mr. Pullins for stating that Judge Eyster had "clearly violated" the judicial code of conduct concerning the duty to recuse in a case. The Ohio Supreme Court opined that if Mr. Pullins had stated that Judge Eyster had "possibly violated" the judicial code of conduct he might have escaped sanction.[3]

In his defense, Mr. Pullins provided his own testimony of several hours, the testimony of two other judges, the testimony of Judge Eyster, over 135 exhibits, extensive case law and statutory authority, and approximately ten character letters. The sole judge on the three member panel that heard the case adopted many of Mr. Pullins arguments in his dissent, recommending a 24 month suspension, with 18 months of the suspension stayed.[4]

This Court has an obligation to make an independent review of the record to determine whether or not Mr. Pullins had a reasonable factual

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[3] *Disciplinary Counsel v. Pullins, 2010 Ohio 6241 (Ohio Dec. 23, 2010).*

[4] *See Appendix B.*

basis for his statements.[5] An analysis of the statements in question will clearly indicate that they are not of the nature that have traditionally resulted in attorney discipline. In fact, the record will show that the statements that were made are normal, perfectly acceptable phrases used widely throughout the legal system.

The overwhelming record will show that in some cases, Mr. Pullins may have been mistaken in his conclusions, but his statements and actions were always supported by a reasonable factual and legal basis. Time and again Mr. Pullins meticulously showed that he relied upon specific statutes, rules, or binding case law as a basis for his actions. In fact, the Ohio Supreme Court has held that attorneys will not be subject to discipline if they can show viable legal support for their actions.[6]

Mr. Pullins' argument of viable legal support is buttressed by the testimony of two visiting judges

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[5] *A federal court is compelled to examine for itself the statements in issue and the circumstances under which they were made to see whether or not they do carry a threat of clear and present danger to the impartiality and good order of the courts or whether they are of a character which the principles of U.S. Const. amend. I, as adopted by the Due Process Clause of the U S Const. amend. XIV, protect.*

Gentile v. State Bar of Nev., 501 U.S. 1030 (U.S. 1991)

[6] *Respondent's strategy may have been flawed, but the fact that he had some arguably viable legal support for his actions is enough to avoid disciplinary sanction*

Toledo Bar Ass'n v. Rust, 124 Ohio St. 3d 305, 313 (Ohio 2010)

that were appointed to oversee cases of Mr. Pullins when Judge Eyster recused himself. These prominent retired judges, who both served on Ohio's 8th District State Appellate Court, testified that Mr. Pullins' actions, while mistaken at times, did not even warrant a referral by them to Disciplinary Counsel.[7]

Even assuming that a constitutional violation is not proven, this Court should reverse the decision of the Ohio Supreme Court on the basis that Mr. Pullins showed viable legal support and a reasonable factual basis for his statements and actions.[8]

II. The Ohio Supreme Court's decision violates petitioner's fundamental first and fourteenth amendment rights and conflicts with this Court's decisions in Landmark v. Virginia, New York Times v. Sullivan, Garrison v. Louisiana, In Re Sawyer, and Gentile v. State Bar of Nevada.....

In Count One the Ohio Supreme Court found that Petitioner was in violation of Ohio's Disciplinary Rules primarily because he truthfully

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[7] *Objections and Brief In Support.*

[8] *The fact finding in disbarment proceedings before the Supreme Court of the Territory of Hawaii and the Court of Appeals does not remove the United States Supreme Court's duty of examining the evidence to see whether it furnishes a rational basis for the characterization put on it by the lower courts.*

In re SAWYER, 360 U.S. 622 (U.S. 1959)

stated in an affidavit of disqualification that he had filed a grievance with Disciplinary Counsel against Judge Eyster. Petitioner respectfully suggests that the opinion of the Ohio Supreme Court conflicts with this Court's opinion in *Landmark v. Virgina*.[9]

The Ohio Supreme Court's sole justification for discipline in this case was to protect the reputation of the judiciary, something this Court has repeatedly stated is not a sufficient reason for restricting first amendment rights.[10]

In disciplining Petitioner, the Ohio Supreme Court once again rejected this Court's holding in *New York Times v. Sullivan* and instead enforced the previously discussed objective standard.

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[9] *The First Amendment guarantees of freedom of speech and press do not permit the criminal punishment under state statutory provisions of third persons (including newspapers), who are strangers to confidential proceedings of a state judicial review commission investigating complaints as to a judge's disability or misconduct, for divulging or publishing truthful information regarding the confidential proceedings of the commission*

Landmark Communications v. Va., 435 U.S. 829 (U.S. 1978)

[10] *An interest in protecting official reputation from injury is an insufficient reason for repressing speech that would otherwise be free, and an interest in protecting the institutional reputation of courts is entitled to no greater weight in the constitutional scales.*

Landmark Communications v. Va., 435 U.S. 829 (U.S. 1978)

Nonetheless, this Court has always rejected such a standard.[11] Petitioner respectfully suggests that his statements were protected under the First and Fourteenth Amendments as articulated by this Court in *Sullivan.*[12]

The Ohio Supreme Court never found that Petitioner's statements presented a clear and present danger of the obstruction of justice. Neither did the Ohio Supreme Court find that Petitioner's statements were made with actual malice as required under *Sullivan.*[13] Under the constitutional standard, as articulated by this Court, Disciplinary Counsel had an obligation to

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[11] *Reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.*

St. Amant v. Thompson, 390 U.S. 727 (U.S. 1968)

[12] *Where judicial officers are involved, the Supreme Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. This is true even though the utterance contains half truths and misinformation. Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice.*

New York Times Co. v. Sullivan, 376 U.S. 254 (U.S. 1964)

[13] Ibid.

provide sufficient evidence that Mr. Pullins had entertained serious doubts about the truth of the statements.[14] Disciplinary Counsel did not provide any such evidence whatsoever.

III. The participation of the grievant in this matter violated Petitioner's rights to a fair and unbiased judiciary and conflicted with this Court's decision in *Caperton v. A. T. Massey Coal Co.*

The sole grievant in this matter was Knox County Common Pleas Judge Otho Eyster. Judge Eyster, throughout every step of this process, served either as a vice chair or chair of the Board of Commissioners on Grievances and Discipline. In his dissent from the panel recommendation, Judge Vukovich found that the majority of the panel was unable to divorce their personal admiration of Judge Eyster and correctly apply the law and the facts. Likewise, at oral argument, Justice Paul Pfeiffer called the involvement of Judge Eyster in this matter "the elephant in the room."

After serving together with Judge Eyster on this board for many years it is not unreasonable for its members to lose their objectivity when ruling upon

[14] *The burden of proving actual malice requires the plaintiff to demonstrate with clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement.*

Rose Corp. v. Consumers Union, 466 U.S. 485 (U.S. 1984)

a grievance that he has filed.[15] Such a due process violation, however, would seriously taint the process from the beginning and require this Court to reverse this decision.[16]

IV. Severely restricting attorney speech harms the legal profession.

Under Ohio law the sole means of disqualifying a biased judge is through filing an affidavit of disqualification with the Chief Justice of the Ohio Supreme Court.[17] This method, in theory, helps to safeguard a litigant's fundament rights to a

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[15] *Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused, denies the latter due process of law.*

Caperton v. A. T. Massey Coal Co., 129 S. Ct. 2252 (U.S. 2009)

[16] *some errors "are so fundamental and pervasive that they require reversal without regard to the facts or circumstances of the particular case.*

Young v. United States ex rel. Vuitton Et Fils S. A., 481 U.S. 787, 809-810 (U.S. 1987)

[17] *R.C. 2701.03 is the sole means by which a litigant may claim that a common pleas judge is biased and prejudiced. Only the Chief Justice of the Ohio Supreme Court or his designee has the authority to pass upon the disqualification of a common pleas court judge.*

Pheils v. Palmer, 2009 Ohio 6342 (Ohio Ct. App., Lucas County Dec. 4, 2009)

fair and impartial tribunal.[18] However, this process is useless if attorneys are reluctant to make use of the procedure because they fear permanent disbarment or other serious disciplinary action.[19]

As other courts have held, attorneys should be free to challenge a court's perceived bias without

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[18] *The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.*

Marshall v. Jerrico, Inc., 446 U.S. 238 (U.S. 1980))

[19] *Attorneys need to be able to raise relevant and colorable arguments of judicial bias, and even appearance of partiality, in order to preserve their clients' rights to fair proceedings. At present, attorneys can be (and have been) punished for raising such arguments, which, of course, deters them from bringing such arguments and makes it so that unfairness in judicial proceedings remains unaddressed.*

Margaret Tarkington, A FREE SPEECH RIGHT TO IMPUGN JUDICIAL INTEGRITY IN COURT PROCEEDINGS, Boston College Law Review: Volume 51, Number 2, March 2010, 363.

the court misconstruing such a challenge as an assault on the integrity of the judge.[20] At the same time, the Ohio Supreme Court already has protections in place to punish the filing of frivolous affidavits of disqualification.[21]

Notwithstanding that fact, sanctions were never requested nor were they ordered in reaction to Mr. Pullins' affidavits of disqualification. Instead, Judge Eyster referred the matter to the disciplinary system, a process for which he was intimately familiar and which he personally oversaw.

V. Conclusion

Attorneys do not forfeit their fundamental rights to speech critical of government officials

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[20] *Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court.*

United States v. Brown, 72 F.3d 25, 29 (5th Cir. La. 1995)

[21] *The statutory right to seek disqualification of a judge is an extraordinary remedy not to be invoked in a frivolous manner. The filing of repeated affidavits of disqualification can result in the imposition of appropriate sanctions*

Kistler v. Kistler (In re Disqualification of Jackson), 84 Ohio St. 3d 1233 (Ohio 1998)

upon their taking of the oath.[22] In fact, attorneys assume additional duties to report misconduct, advocate for their clients, and to defend the legal system. More specifically, attorneys are best placed to point out to the public the shortcomings of bad judges, especially in states like Ohio where every judge is elected by voters.[23] Neither should an attorney's fundamental rights change depending upon the state in which they practice law.

Some states, including Colorado, Louisiana, Oklahoma and California have applied the subjective standard to attorney speech, while a

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[22] *Speech on matters of public concern is at the heart of the First Amendment's protection. The First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. That is because speech concerning public affairs is more than self-expression; it is the essence of self-government. Accordingly, speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.*

Snyder v. Phelps, 2011 U.S. LEXIS 1903 (U.S. Mar. 2, 2011)

[23] *Such suppression correspondingly denies the right of the public to receive opinions from those who have the education, training, and exposure to best offer informed views regarding the judiciary.*

Tarkington, Margaret, A Free Speech Right to Impugn Judicial Integrity in Court Proceedings (October 23, 2009). Boston College Law Review, Vol. 51, p. 363, 2010. Available at SSRN: http://ssrn.com/abstract=1493422

majority of the states now apply the objective standard.[24]

This Court has repeatedly held that judges should not be immune from criticism.[25] It would be ironic, indeed, as Justice Marshall stated, if the very institutions that safeguard constitutional rights, exempt themselves from them.[26] Unfortunately, in Ohio, the state's highest court has repeatedly done so. It is now up to this Court to restore the constitutional balance.

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[24] In re Cobb, 445 Mass. 452 (Mass. 2005)

[25] *Citizens have a right under our constitutional system to criticize government officials and agencies. Courts are not, and should not be, immune to such criticism. Government censorship can no more be reconciled with our national constitutional standard of freedom of speech and press when done in the guise of determining "moral character," than if it should be attempted directly.*

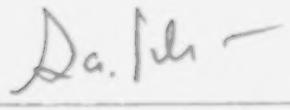
Konigsberg v. State Bar of Cal., 353 U.S. 252, 269 (U.S. 1957)

[26] *It would be ironic indeed if an exception to the Constitution were to be recognized for the very institution that has the chief responsibility for protecting constitutional rights.*

United States v. Grace, 461 U.S. 171, 185 (U.S. 1983)

The undersigned humbly and respectfully requests that this Court grant his Petition for Writ of Certiori. Thank you.

RESPECTFULLY SUBMITTED.



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Appendix A

DISCIPLINARY COUNSEL
v. PULLINS.

No. 2010-0851

SUPREME COURT OF OHIO

2010 Ohio 6241; 2010 Ohio LEXIS 3185

September 14, 2010, Submitted

December 23, 2010, Decided

NOTICE:

THIS SLIP OPINION IS SUBJECT TO FORMAL REVISION BEFORE IT IS PUBLISHED IN AN ADVANCE SHEET OF THE OHIO OFFICIAL REPORTS.

PRIOR HISTORY: [**1]

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 09-022.

Disciplinary Counsel v. Pullins, 126 Ohio St. 3d 1554, 2010 Ohio 4023, 932 N.E.2d 884, 2010 Ohio LEXIS 2194 (2010)

Disciplinary Counsel v. Pullins, 2010 Ohio 6313, 2010 Ohio LEXIS 3196 (Ohio, Dec. 23, 2010)

State v. Wilhelm, 2004 Ohio 5522, 2004 Ohio App. LEXIS 5032 (Ohio Ct. App., Knox County, Oct. 15, 2004)

CASE SUMMARY:

PROCEDURAL POSTURE: Relator disciplinary counsel charged respondent attorney with numerous counts of professional misconduct. A panel of the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court made findings of fact and misconduct and recommended an indefinite suspension of the attorney's license to practice law in Ohio. The Board adopted the panel's findings and recommended sanction.

OVERVIEW: The attorney filed affidavits of disqualification and other court documents containing accusations against two judges, misused his power to issue subpoenas to further his personal agenda, misused his authority as a notary public, accused a judge and a prosecutor of engaging in ex parte communications, and accused two judges of engaging in ex parte communications regarding another pending matter. The attorney objected to findings that he violated Ohio Code Prof. Resp. DR 1-102(A)(5), (6), Ohio Code Prof. Resp. DR 7-106(C)(6), Ohio Code Prof. Resp. DR 8-102(B), *Ohio Sup. Ct. R. Gov't Bar IV(2)*, and *Ohio Sup. Ct. R. Gov't Bar V(11)(E)*, as well as other ethical rules. In suspending the attorney, the supreme court noted that the attorney's statements were false because they expressed an erroneous and unreasonable belief that a judge had disregarded the requirements of *R.C. 2903.214(D)(1)*. The supreme court was not precluded from considering alleged ethical violations due to the fact that a trial judge failed to sanction the attorney or report his conduct. An indefinite suspension was appropriate because the attorney's conduct demonstrated a profound disrespect for the legal profession.

OUTCOME: The attorney's objections were overruled, the Boards' findings of fact and misconduct were accepted, and the attorney was indefinitely suspended from the practice of law in Ohio. The attorney had to comply with the requirements for reinstatement, and he had to provide proof to a reasonable degree of medical certainty that he was mentally fit to return to the competent, professional,

and ethical practice of law.

LexisNexis(R) Headnotes

Legal Ethics > Professional Conduct > Tribunals

[HN1] Ohio Code Prof. Resp. DR 1-102(A)(5) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Legal Ethics > Professional Conduct > General Overview

[HN2] Ohio Code Prof. Resp. DR 1-102(A)(6) prohibits a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law.

Legal Ethics > Professional Conduct > Tribunals

[HN3] Ohio Code Prof. Resp. DR 7-106(C)(6) prohibits a lawyer from engaging in undignified or discourteous conduct that is degrading to a tribunal when appearing in his professional capacity before that tribunal.

Legal Ethics > Professional Conduct > Tribunals

[HN4] Ohio Code Prof. Resp. DR 8-102(B) prohibits a lawyer from knowingly making false accusations against a judge or other adjudicatory officer.

Legal Ethics > Professional Conduct > Tribunals

[HN5] *Ohio Sup. Ct. R. Gov't Bar IV(2)* requires a lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office but for the maintenance of its

supreme importance.

Legal Ethics > Professional Conduct > General Overview

[HN6] *Ohio Sup. Ct. R. Gov't Bar V(11)(E)* requires that all proceedings and documents relating to review and investigation of grievances shall be private.

Legal Ethics > Professional Conduct > General Overview

[HN7] Ohio Code Prof. Resp. DR 1-102(A)(4) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Violation of Protective Orders > Application & Issuance

[HN8] *R.C. 2903.214(D)(1)* provides that if a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing as soon as possible after the petition is filed, but not later than the next day that the court is in session after the petition is filed. The plain language of the statute, however, does not specify the type of hearing that the court must conduct. The Ohio General Assembly has used the term "hearing" in numerous instances without defining it, and in those cases, the nature of the hearing is left to the discretion of the trial court.

Governments > Courts > Judges

[HN9] An affidavit of disqualification is not a vehicle

to contest matters of substantive or procedural law.

Legal Ethics > Professional Conduct > Tribunals

[HN10] Ethical rules prohibiting false statements impugning the integrity of judges are necessary to preserve public confidence in the fairness and impartiality of the system of justice. In furtherance of that compelling governmental interest, there is an objective standard to determine whether a lawyer's statement about a judicial officer was made with knowledge or reckless disregard of its falsity, instead of the subjective, actual-malice standard applied in defamation cases against a public official. An attorney may be sanctioned for making accusations of judicial impropriety that a reasonable attorney would believe are false.

Governments > Courts > Rule Application & Interpretation

Legal Ethics > Professional Conduct > General Overview

[HN11] The Supreme Court Rules for the Government of the Bar of Ohio necessarily apply to attorneys licensed to practice law in the state of Ohio. The fact that attorneys are not required to take the oath set forth in *Ohio Sup. Ct. R. Gov't Bar V(11)(E)(4)* does not exempt them from the obligation to maintain the privacy of a disciplinary grievance prior to the certification of a complaint by a probable-cause panel.

Governments > Courts > Judges

Legal Ethics > Judicial Conduct

Legal Ethics > Professional Conduct > General Overview

[HN12] It is improper under the privacy provisions of *Ohio Sup. Ct. R. Gov't Bar V(11)(E)* for an attorney to state in an affidavit of disqualification of a judge that the attorney has filed a disciplinary grievance against the judge when the grievance has not been certified as a formal complaint. An attorney is not prohibited from including in an affidavit of disqualification the facts underlying a grievance.

Family Law > Guardians > General Overview

Family Law > Guardians > Appointment

[HN13] Being licensed as an attorney is not a prerequisite for appointment as a guardian ad litem in a domestic-relations or juvenile case, but even lay guardians ad litem are officers of the court. *Sup. R. 48(D)(3)* and *(E)*. As a general rule, a guardian ad litem's report is not private. It is filed with the court, *Sup. R. 48(D)(15)*, and it is available for inspection by the parties and their counsel, *Sup. R. 48(F)(1)* and *(2)*. The rules do provide a mechanism for restricting access to the report to preserve the privacy, confidentiality, or safety of the parties or the person that the guardian was appointed to protect. *Sup. R. 48(D)(15)*.

Legal Ethics > Professional Conduct > General Overview

[HN14] Ohio Code Prof. Resp. DR 7-102(A)(4)

prohibits a lawyer from knowingly using perjured testimony or false evidence. Ohio Code Prof. Resp. DR 7-102(A)(6) prohibits a lawyer from creating or preserving evidence when he knows or it is obvious that the evidence is false.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > Exclusive Jurisdiction

Legal Ethics > General Overview

[HN15] A trial court has the authority and duty to require attorneys in proceedings before it to conduct themselves ethically. *Ohio Const. art. IV, § 2(B)(1)(g)*, however, vests the Ohio Supreme Court with exclusive original jurisdiction over admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

Evidence > Authentication > Self-Authentication

Evidence > Documentary Evidence > General Overview

Legal Ethics > Professional Conduct > General Overview

[HN16] Because notarized documents are self-authenticating pursuant to *Evid. R. 902(8)*, lawyers must not take a cavalier attitude toward their notary responsibilities and acknowledge the signatures of persons who have not appeared before them. Such "activities are a fraud on the court where the documents are filed and on all those who rely on such documents, and a casual attitude toward statutory

requirements breeds disrespect for the law and for the legal profession.

Legal Ethics > Professional Conduct > General Overview

[HN17] Ohio Code Prof. Resp. DR 1-102(A)(4) and *Ohio R. Prof. Conduct 8.4(c)* both prohibit a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Legal Ethics > Professional Conduct > Tribunals

[HN18] Ohio Code Prof. Resp. DR 1-102(A)(5) and *Ohio R. Prof. Conduct 8.4(d)* both prohibit a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Legal Ethics > Professional Conduct > General Overview

[HN19] Ohio Code Prof. Resp. 1-102(A)(6) and *Ohio R. Prof. Conduct 8.4(h)* both prohibit a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law.

Legal Ethics > Professional Conduct > Tribunals

[HN20] Ohio Code Prof. Resp. DR 7-106(A) requires compliance with a tribunal's rulings made in the course of a proceeding.

Legal Ethics > Professional Conduct > Tribunals

[HN21] *Ohio Sup. Ct. R. Gov't Bar IV(2)* requires a lawyer to maintain a respectful attitude toward the courts.

Legal Ethics > Professional Conduct > Frivolous Claims

[HN22] *Ohio R. Prof. Conduct 3.1* prohibits a lawyer from bringing or defending a proceeding that is unsupported by law or lacks a good-faith argument for an extension, modification, or reversal of existing law.

Legal Ethics > Professional Conduct > Tribunals

[HN23] *Ohio R. Prof. Conduct 3.5(a)(6)* prohibits a lawyer from engaging in undignified or discourteous conduct that is degrading to a tribunal.

Legal Ethics > Professional Conduct > Tribunals

[HN24] *Ohio R. Prof. Conduct 8.2(a)* prohibits a lawyer from knowingly or recklessly making false statements concerning the integrity of a judicial officer.

Evidence > Testimony > Credibility > General Overview

Legal Ethics > Sanctions > Disciplinary Proceedings > Appeals

[HN25] Unless the record weighs heavily against a hearing panel's findings in an attorney disciplinary case, the Ohio Supreme Court defers to the panel's credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand.

Legal Ethics > Judicial Conduct

[HN26] Former Ohio Code Jud. Conduct Canon 3(E)(1)(a) requires a judge to disqualify himself in a proceeding in which he has a personal bias or prejudice concerning the party or the party's lawyer. Former Ohio Code Jud. Conduct Canon 3(E)(1)(c) requires a judge to disqualify himself in a proceeding in which he or his spouse has an economic interest in the subject matter in controversy or in a party to the proceeding. Former Ohio Code Jud. Conduct Canon 3(E)(1)(d)(i) and (iv) requires a judge to disqualify himself in a proceeding in which he or his spouse is a party to the proceeding, or an officer, director, or trustee of a party, or is known by the judge to have an economic interest that could be substantially affected by the proceeding.

Legal Ethics > Professional Conduct > General Overview

[HN27] Ohio Code Prof. Resp. DR 7-102(A)(5) prohibits a lawyer from knowingly making a false statement of law or fact.

Legal Ethics > Sanctions > Disciplinary Proceedings > Hearings

[HN28] When imposing sanctions for attorney misconduct, the Ohio Supreme Court considers relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. In making a final determination, the Ohio Supreme Court also weighs evidence of the aggravating and mitigating factors listed in Section 10(B) of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the

Board of Commissioners on Grievances and Discipline (BCGD Proc.Reg.). Because each disciplinary case is unique, the Ohio Supreme Court is not limited to the factors specified in the rule but may take into account all relevant factors in determining what sanction to impose. BCGD Proc.Reg. 10(B).

HEADNOTES

Attorneys -- Misconduct -- Multiple violations of the Code of Professional Responsibility and the Rules of Professional Conduct -- Indefinite suspension.

COUNSEL: Jonathan E. Coughlan, Disciplinary Counsel, and Michael Murman and Edward G Kagels, for relator.

Scott Pullins, Pro se.

JUDGES: BROWN, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

OPINION

Per Curiam

[*P1] Respondent, Scott Allan Pullins, of Columbus, Ohio, Attorney Registration No. 0076809, was admitted to the practice of law in Ohio in 2003.

[*P2] In a seven-count amended complaint accepted for filing on March 27, 2009, relator, Disciplinary Counsel, charged respondent with numerous counts of professional misconduct arising from his filing of false and disrespectful statements

regarding two judges in affidavits of disqualification, improper use of his notary powers, issuance of subpoenas in a stayed case, accusations that two judges and a prosecutor engaged in ex parte communications about pending cases, and issuance of a subpoena to a judge's wife. A panel of the Board of Commissioners on Grievances and Discipline made findings of fact and misconduct and recommended that this court indefinitely suspend respondent's license to practice law in Ohio. The [**2] board adopted the panel's findings and recommended sanction. [*P3] Respondent has made numerous objections to the board's report. [1] For the reasons that follow, however, we overrule those objections, accept the board's findings of fact and misconduct, and indefinitely suspend respondent from the practice of law in Ohio.

1 On December 3, 2010, respondent moved this court for leave to clarify the record, based upon certain alleged misstatements of fact that relator made at oral argument. Because the documentary evidence alleged in the record speaks for itself, we hereby deny respondent's motion.

Misconduct

Count One

[*P4] In January 2006, respondent commenced an action seeking ex parte and permanent civil stalking protection orders on behalf of himself, his wife, his daughter, and his wife's parents in the Knox County Court of Common Pleas. The case was assigned to Judge Otho Eyster. In accordance with Rule 22 of the Knox County Common Pleas Court

Rules of Practice and Procedure, [2] the court conducted a hearing upon the affidavit submitted by respondent and denied the petition for an ex parte order. [*P5] Before the full hearing on respondent's petition for the protection order, respondent filed grievances [**3] against the judge with the Office of Disciplinary Counsel, followed by an affidavit of disqualification in this court. In his affidavit of disqualification, respondent averred that "the judge has violated Canons 1, 2, and 3 of the Ohio Judicial Code of Conduct." He noted that *R.C. 2903.214(D)(1)* provides that a court "shall hold an ex parte hearing as soon as possible" after the petition for an ex parte civil order has been filed and stated that *"Judge Eyster apparently disagrees with this law."* (Emphasis sic.) Respondent further stated that "Judge Eyster simply ignored Petitioner's motion for an ex parte hearing" and that he "summarily denied the petition for an ex parte order and refused to grant an ex parte hearing." Respondent also averred that "Petitioner has spoken with other local attorneys who have informed him that Judge Eyster routinely refuses to hold ex parte hearings and rarely grants permanent protection orders" and that he "has brought three separate formal complaints against Judge Eyster with the Office of Disciplinary Counsel regarding Judge Eyster's refusal to follow Ohio law and Ohio civil rules concerning the above matters."

2 Rule 22 of the Knox County Common Pleas [**4] Court Rules of Practice and Procedure provides, "[H]earings on *ex parte* orders may be conducted upon affidavit only."

[*P6] Chief Justice Moyer denied respondent's

affidavit of disqualification on March 16, 2006. *In re Disqualification of Eyster* (Mar. 16, 2006), case No. 06-AP-017. Thereafter, respondent voluntarily dismissed his petition for a civil stalking protection order.

[*P7] The board observed that at the time respondent had filed his affidavit to disqualify the judge, the grievances against the judge were confidential because the judge had not waived his right to confidentiality and no formal complaint had been certified to the board. Respondent has admitted that he was aware that all documents and proceedings relating to the grievances filed by him were confidential and that in *In re Disqualification of Krueger (1995), 74 Ohio St.3d 1267, 1268, 657 N.E.2d 1365*, this court has cautioned attorneys that "disciplinary complaints remain private until and unless formal proceedings begin before the Board of Commissioners on Grievances and Discipline." Therefore, the board determined that respondent knew that he should not have revealed the fact that he had filed grievances against the judge, [**5] but did so based upon his belief that the affidavit of disqualification was, to some extent, private.

[*P8] Based upon these factual findings, the board concluded that respondent's conduct violated [HN1] DR 1-102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), [HN2] 1-102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), [HN3] 7-106(C)(6) (prohibiting a lawyer from engaging in undignified or discourteous conduct that is degrading to a tribunal when appearing in his

professional capacity before that tribunal), and [HN4] 8-102(B) (prohibiting a lawyer from knowingly making false accusations against a judge or other adjudicatory officer) and [HN5] *Gov.Bar R. IV(2)* (requiring a lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office but for the maintenance of its supreme importance) and [HN6] *V(11)(E)* (requiring that all proceedings and documents relating to review and investigation of grievances shall be private). The board, however, recommends that we dismiss the alleged violation of [HN7] DR 1-102(A)(4) (prohibiting a lawyer from engaging [**6] in conduct involving dishonesty, fraud, deceit, or misrepresentation) in Count One because it has not been proven by clear and convincing evidence.

[*P9] Respondent objects to the board's findings of misconduct, arguing that his conduct did not violate the Code of Professional Responsibility because (1) he had a reasonable factual basis for stating that the judge had violated Canons 1, 2, and 3 of the former Code of Judicial Conduct and (2) he had a reasonable factual and legal basis for revealing that he had filed grievances against the judge in the context of his affidavit of disqualification.

[*P10] Throughout this disciplinary proceeding, respondent has maintained that *R.C. 2903.214(D)(1)* requires a court to conduct an ex parte hearing, at which the petitioner seeking an ex parte protection order may personally appear and present testimony in support of his or her petition. [HN8] *R.C. 2903.214(D)(1)* provides that "[i]f a person who files a petition pursuant to this section requests an ex parte

order, the court shall hold an ex parte hearing as soon as possible after the petition is filed, but not later than the next day that the court is in session after the petition is filed." The plain language [**7] of the statute, however, does not specify the type of hearing that the court must conduct. We have recognized that the General Assembly has used the term "hearing" in numerous instances without defining it, and that "[i]n those cases, we have left the nature of the hearing to the discretion of the trial court." *Pruszynski v. Reeves, 117 Ohio St.3d 92, 2008 Ohio 510, 881 N.E.2d 1230, P 9.* While respondent sought to challenge the court's exercise of that discretion, it is well settled that [HN9] an affidavit of disqualification "is not a vehicle to contest matters of substantive or procedural law." *In re Disqualification of Solovan, 100 Ohio St.3d 1214, 2003 Ohio 5484, 798 N.E.2d 3, P 4.*

[*P11] We have recognized that [HN10] ethical rules prohibiting false statements impugning the integrity of judges are necessary " 'to preserve public confidence in the fairness and impartiality of our system of justice.' " *Disciplinary Counsel v. Gardner, 99 Ohio St.3d 416, 2003 Ohio 4048, 793 N.E.2d 425, P 29,* quoting *Standing Comm. on Discipline of the United States Dist. Court for the Cent. Dist. of California v. Yagman (C.A.9, 1995), 55 F.3d 1430, 1437.* In furtherance of that compelling governmental interest, we adopted [**8] an objective standard to determine whether a lawyer's statement about a judicial officer was made with knowledge or reckless disregard of its falsity, instead of the subjective, actual-malice standard applied in defamation cases against a public official. *Gardner at P 31.* See also *New York Times Co. v. Sullivan (1964), 376 U.S. 254,*

84 S.Ct. 710, 11 L.Ed.2d 686. Therefore, we held that "an attorney may be sanctioned for making accusations of judicial impropriety that a reasonable attorney would believe are false." *Gardner at P 31.*

[*P12] Here, a reasonable attorney would believe that respondent's statements were false because they expressed an erroneous and unreasonable belief that the judge had disregarded the requirements of *R.C. 2903.214(D)(1)* by failing to conduct *any* hearing on the ex parte motion and had violated multiple Canons of the former Code of Judicial Conduct. These unfounded and disrespectful statements neither establish that the law is what respondent claims it to be nor present a good-faith argument for an extension, modification, or reversal of existing law. Rather, they call into question the honesty and integrity of a judge and cast the entire judiciary in a bad light.

[*P13] [**9] Respondent further contends that it is not a disciplinary violation for an attorney to reveal in an affidavit of disqualification that he has filed grievances against the judge he seeks to disqualify. He asserts that a number of attorneys have done so without facing disciplinary charges and that he had a good-faith reason to believe that the privacy provisions of *Gov.Bar R. V(11)(E)* did not apply to him because he was not required to take the oath of confidentiality set forth in *Gov.Bar R. V(11)(E)(4).*

[*P14] [HN11] The Supreme Court Rules for the Government of the Bar of Ohio necessarily apply to attorneys licensed to practice law in this state. The fact that attorneys are not required to take the oath set forth in *Gov.Bar R. V(11)(E)(4)* does not exempt them from the obligation to maintain the privacy of a

disciplinary grievance prior to the certification of a complaint by a probable-cause panel.

[*P15] This interpretation of *Gov.Bar R. V(11)(E)* is consistent with Board of Commissioners on Grievances and Discipline, Opinion No. 98-2, 1998 Ohio Griev. Discip. LEXIS 8 (Apr. 3, 1998), which states, [HN12] "It is improper under the privacy provisions of *Governing Bar Rule V§ 11(E)* for an attorney to state in an affidavit of disqualification of a [**10] judge that the attorney has filed a disciplinary grievance against the judge when the grievance has not been certified as a formal complaint. * * * An attorney is not prohibited from including in an affidavit of disqualification the facts underlying a grievance." Moreover, as Chief Justice Moyer observed in *In re Disqualification of Squire, 105 Ohio St.3d 1221, 2004 Ohio 7358, 826 N.E.2d 285, P 7,* "all proceedings and documents relating to those uncertified complaints are private and confidential, and I have no knowledge about those complaints or the allegations in them beyond what affiant and [the judge] have stated in their filings with this court." Thus, the disclosure that a grievance has been filed alleging the same facts as are set forth in an affidavit of disqualification provides no additional information that will aid the Chief Justice in determining whether disqualification is appropriate.

[*P16] Having determined that respondent's objections to the board's findings with respect to count one are meritless, we adopt the board's findings of fact and misconduct with respect to this count.

Count Two

[*P17] In September 2005, Judge Eyster appointed respondent to serve as a guardian ad litem

[**11] in a domestic-relations case. In his February 2006 guardian's report, respondent made the following statements, referring to the court's denial of the mother's petitions for an ex parte and permanent domestic-violence civil protection order from her former boyfriend:

[*P18] (1) "On July 13, 2005, as is his custom, Judge Otho Eyster refused to hold an Ex Parte Hearing and summarily denied the request for an Ex Parte Protection Order."

[*P19] (2) "Apparently Judge Eyster does not agree with this portion of Ohio law [*R.C. 2903.214(D)(1)*] so he routinely ignores it."

[*P20] (3) "In my years of practicing law and working with appointed and elected officials, this is the worst example that I have ever seen of negligence and incompetence in carrying out the duties of a public official."

[*P21] (4) "Unfortunately, Judge Otho Eyster and this Court have failed [the mother] significantly in her time of need."

[*P22] The board found that respondent's conduct in making these statements violated DR 1-102(A)(5), 1-102(A)(6) and 7-106(C)(6) and *Gov.Bar R. IV(2)*.

[*P23] Respondent objects to the board's findings with respect to this count, claiming that he had a reasonable factual and legal basis for making these statements based upon the [**12] judge's failure to conduct an evidentiary hearing on the mother's petition for an ex parte civil protection order. But as discussed in Count One, this argument is without merit.

[*P24] Although he admits that his statements were discourteous and disrespectful to Judge Eyster,

respondent contends that they were not so undignified or discourteous as to violate DR 7-106(C)(6) or 1-102(A)(5). Respondent seeks to diminish the significance of his conduct, observing that he made the statements in his capacity as a guardian ad litem, rather than as an attorney, and that the report was not widely disseminated or made public because it was never entered into evidence in the underlying case.

[*P25] [HN13] Being licensed as an attorney is not a prerequisite for appointment as a guardian ad litem in a domestic-relations or juvenile case, but even lay guardians ad litem are officers of the court. See *Sup.R. 48(D)(3)* and *(E)*. Therefore, respondent's obligations under the former Code of Professional Responsibility and the Rules of Professional Conduct are inextricably intertwined with his appointed role as a guardian ad litem in the underlying case. Moreover, we observe that as a general rule, a guardian ad litem's report [**13] is not private. It is filed with the court, see *Sup.R. 48(D)(15)*, and it is available for inspection by the parties and their counsel, *Sup.R. 48(F)(1)* and *(2)*. The rules do provide a mechanism for restricting access to the report to preserve the privacy, confidentiality, or safety of the parties or the person that the guardian was appointed to protect. *Sup.R. 48(D)(15)*.

[*P26] We have previously disciplined an attorney for making unfounded accusations of judicial impropriety against an appellate panel in a motion seeking reconsideration of that panel's decision affirming his client's criminal conviction. *Gardner, 99 Ohio St.3d 416, 2003 Ohio 4048, 793 N.E.2d 425*. In this case, respondent accused Judge Eyster of

negligence, incompetence, and ignoring the law that he is charged to uphold, based upon a flawed reading of the Ohio Revised Code and an incomplete investigation of the case. Although respondent had evidence that the mother's former boyfriend had engaged in acts of domestic violence against other persons in the past, he had no evidence that he had engaged in acts of violence toward the mother or her children. Indeed, respondent admitted that he did not read the transcript of the full [**14] hearing on the mother's petition. Our review of that transcript confirms Judge Eyster's testimony that a domestic violence protection order was unwarranted.

[*P27] Because we conclude that respondent's objections are without merit, we adopt the board's findings of fact and misconduct with respect to this count.

Count Three

[*P28] In April 2006, respondent filed a complaint for temporary and permanent injunctions and declaratory judgment on behalf of his wife and his father-in-law. Contemporaneously with the filing of that action, respondent filed a motion for a temporary restraining order and affidavit in support of that motion.

[*P29] Respondent placed his notary stamp and seal on the affidavit, which purportedly had been executed by his wife. The affidavit states, "Now comes Plaintiff Kathryn Elliott Pullins on April 3, 2006, and swears that the information contained in the previously filed complaint and the motion for a temporary restraining order filed herein is all true and accurate to the best of my knowledge and belief." Respondent later acknowledged that he had signed

his wife's name to the document and claimed that he had done so pursuant to a power of attorney. He further admitted that after doing [**15] so, he placed his notary stamp and seal on the affidavit, thereby intending to notarize his own signing of his wife's name.

[*P30] The board found that this conduct violated DR 1-102(A)(4), 1-102(A)(6), [HN14] 7-102(A)(4) (prohibiting a lawyer from knowingly using perjured testimony or false evidence), and 7-102(A)(6) (prohibiting a lawyer from creating or preserving evidence when he knows or it is obvious that the evidence is false).

[*P31] Respondent objects to the board's findings of misconduct, arguing that he had a power of attorney authorizing him to sign his wife's name to the challenged affidavit. He further asserts that the affidavit was not material because the trial court had denied the request for a temporary restraining order, had not relied upon the affidavit, had not considered the affidavit to be a fraud upon the court, and had not believed that counsel committed any acts requiring disciplinary action. Therefore, respondent asks this court to find that he violated only DR 1-102(A)(6) and dismiss the remaining violations in this count.

[*P32] We have acknowledged that [HN15] a trial court has the authority and duty to require attorneys in proceedings before it to conduct themselves ethically. *Royal Indem. Co. v. J.C. Penney Co., Inc. (1986), 27 Ohio St.3d 31, 34, 27 OBR 447, 501 N.E.2d 617,* [**16] quoting *Hahn v. Boeing Co. (1980), 95 Wash.2d 28, 34, 621 P.2d 1263. Section 2(B)(1)(g), Article IV of the Ohio Constitution,* however, vests this court with exclusive original jurisdiction over

"[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law." Therefore, we accord no weight to respondent's argument that the trial judge's failure to sanction him or otherwise report his conduct to a disciplinary authority precludes this court from considering these alleged ethical violations.

[*P33] We have previously found a violation of DR 1-102(A)(4) when an attorney signed a client's name to an affidavit without indicating that the signature was made with telephone authorization and then notarized her rendition of the client's signature. *Cincinnati Bar Assn. v. Thomas (2001), 93 Ohio St. 3d 402, 403, 2001 Ohio 1344, 754 N.E.2d 1263.* See also *Disciplinary Counsel v. Mezacapa, 101 Ohio St.3d 156, 2004 Ohio 302, 803 N.E.2d 397, P 2-3.* [HN16] Because notarized documents are self-authenticating pursuant to *Evid.R. 902(8)*, we have cautioned that "lawyers must not take a cavalier attitude toward their notary responsibilities and acknowledge the signatures [**17] of persons who have not appeared before them." *Lorain Cty. Bar Assn. v. Papcke (1998), 81 Ohio St.3d 91, 93, 1998 Ohio 452, 689 N.E.2d 549.* Moreover, we have observed that that such "activities are a fraud on the court where the documents are filed and on all those who rely on such documents, [and that] this casual attitude toward statutory requirements breeds disrespect for the law and for the legal profession." *Id. at 93-94.*

[*P34] Respondent acknowledged at his disciplinary hearing that he (1) had failed to indicate on the face of the affidavit that he signed his wife's name pursuant to a power of attorney, (2) had improperly notarized his own signing of his wife's

name, and (3) should have had a disinterested third party notarize the document.

[*P35] Based upon the foregoing, we overrule respondent's objections with respect to Count Three and adopt the board's findings of fact and misconduct.

Count Four

[*P36] In May 2006, respondent filed a pro se lawsuit in the Knox County Court of Common Pleas against a member of the Ohio House of Representatives, seeking relief for alleged defamation. The case was assigned to a visiting judge.

[*P37] The attorney general, who represented the defendant, moved to dismiss the action for [**18] lack of subject-matter jurisdiction, stating that the action belonged in the Ohio Court of Claims. At a hearing in October 2006, the parties agreed that instead of being dismissed, the case would be "held in suspense" or stayed pending a ruling by the Ohio Court of Claims.

[*P38] But in December 2006, despite his knowledge of the stay, respondent caused two subpoenas duces tecum to issue in the inactive case, seeking information regarding the identity of persons who had allegedly posted disparaging comments about respondent and his family on the Internet. Respondent failed to serve copies of the subpoenas on opposing counsel as required by *Civ.R. 45(A)(3)*.

[*P39] On January 29, 2007, an assistant prosecuting attorney filed a notice on behalf of the clerk of courts advising the court that respondent had caused subpoenas to issue in the inactive case. Respondent filed an objection to the clerk's notice. The common pleas court judge issued an order for respondent to appear and explain his issuance of the

two subpoenas in the inactive case and their relationship to the case and "to defend against a suggestion of an apparent abuse of process."

[*P40] Respondent then voluntarily dismissed both the stayed action [**19] and the Court of Claims action pursuant to *Civ.R. 41(A)*. Then, in an effort to prevent the common pleas court judge from taking any further action, he filed a petition for a writ of prohibition in the Fifth District Court of Appeals, alleging that because the action had been voluntarily dismissed, the judge lacked jurisdiction to pursue charges of civil contempt. The appellate court granted the judge's motion to dismiss the petition on the morning of March 19, 2007 - the date that respondent had been ordered to appear and explain his conduct to the common pleas court judge. Respondent's wife called to advise the common pleas court that he was ill, and he did not appear at the hearing. Consequently, the judge reset the hearing for May 31, 2007.

[*P41] Respondent then filed an affidavit to disqualify the judge, alleging that he harbored bias and prejudice against respondent, had violated multiple judicial canons, had engaged in improper ex parte communications with the assistant prosecuting attorney, had decided key evidentiary and legal matters without affording respondent an opportunity to argue his case, and had begun to act as an advocate, rather than as an impartial judge. Chief Justice [**20] Moyer denied the affidavit of disqualification on April 27, 2007. *In re Disqualification of Curran* (Apr. 26, 2007), case No. 07-AP-34.

[*P42] Although the board finds that both the

judge and the assistant prosecuting attorney testified that they did not discuss the case via telephone, we note that the record contains no testimony from the assistant prosecuting attorney. Nonetheless, the panel and board found the judge's testimony on this issue to be more credible than that of respondent.

[*P43] On March 29 and 30 and May 3, 2007, respondent issued a number of additional subpoenas in the inactive case to compel persons to attend the May 31, 2007 hearing regarding his issuance of the two earlier subpoenas or to produce documentary evidence. Recipients of those subpoenas included the defendant, the judge presiding over the case, disciplinary counsel, the attorney general, the House of Representatives, the Knox County prosecuting attorney, and a party to an unrelated lawsuit involving respondent. The board determined that none of the later subpoenas were relevant to the court's order for respondent to explain his issuance of the two earlier subpoenas -- the only matter pending before the court -- and [**21] characterized their issuance as "an attempt by Respondent to obtain information of imagined conspiracies against him."

[*P44] The board also rejected respondent's explanation that he had issued the first two subpoenas to support a request for a gag order in the underlying jury case. It stated that this claim was "not credible and merely an excuse" in light of the anticipated exercise of jurisdiction by the Court of Claims. The board similarly rejected respondent's explanations that he had not intentionally failed to serve the subpoenas on opposing counsel, that he had mailed a copy of one subpoena to opposing counsel, and that one of the subpoenas had never been served.

Instead, it concluded that his failure to serve the subpoenas on opposing counsel was an intentional act.

[*P45] Based upon these factual findings, the board found that respondent's continuing course of conduct violated [HN17] DR 1-102(A)(4) and *Prof.Cond.R. 8.4(c)* (both prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), [HN18] DR 1-102(A)(5) and *Prof.Cond.R. 8.4(d)* (both prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), [HN19] DR 1-102(A)(6) and [**22] *Prof.Cond.R. 8.4(h)* (both prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), [HN20] DR 7-106(A) (requiring compliance with a tribunal's rulings made in the course of a proceeding) and [HN21] *Gov.Bar R. IV(2)* (requiring a lawyer to maintain a respectful attitude toward the courts) and that his conduct after February 1, 2007, violated [HN22] *Prof.Cond.R. 3.1* (prohibiting a lawyer from bringing or defending a proceeding that is unsupported by law or lacks a good-faith argument for an extension, modification, or reversal of existing law), [HN23] *3.5(a)(6)* (prohibiting a lawyer from engaging in undignified or discourteous conduct that is degrading to a tribunal), and [HN24] *8.2(a)* (prohibiting a lawyer from knowingly or recklessly making false statements concerning the integrity of a judicial officer).

[*P46] Respondent objects to the board's findings with respect to the issuance of subpoenas in the inactive case on the grounds that his conduct did not constitute an abuse of process or constitute frivolous activity. As previously discussed in Count Three,

Section 2(B)(1)(g), Article IV of the Ohio Constitution vests this court with exclusive original jurisdiction over [**23] attorney-discipline matters. Therefore, a trial court's dismissal of a counterclaim alleging abuse of process, denial of a *Civ.R. 11* motion for sanctions, or failure to make a sua sponte finding of frivolous conduct cannot divest this court of jurisdiction to consider whether respondent's conduct has violated the Code of Professional Responsibility or Rules of Professional Conduct.

[*P47] Respondent also argues that (1) he did not knowingly violate the court's stay because it did not expressly prohibit the parties from conducting discovery, (2) his erroneous belief that the May 31, 2007 hearing was a contempt hearing justified his issuance of additional subpoenas in the stayed case, and (3) his failure to serve the subpoenas on opposing counsel was not intentional. These arguments are without merit for three reasons. First, the court's October 23, 2006 judgment entry of suspense put the parties on notice that the entire case would remain inactive until the Court of Claims issued a ruling regarding its jurisdiction. Second, neither the word "contempt," nor *R.C. Chapter 2705*, was used in the court's February 23, 2007 order for respondent to explain his issuance of the subpoenas. Therefore, [**24] respondent had no reasonable cause to believe that the hearing would be a contempt hearing. Third, because the panel was in the best position to assess the credibility of the witness testimony and rejected respondent's testimony that he did not intentionally fail to serve copies of subpoenas on opposing counsel, we defer to that determination. See *Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St.3d 164, 2006 Ohio 550,*

842 N.E.2d 35, P 24 ([HN25] "Unless the record weighs heavily against a hearing panel's findings, we defer to the panel's credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand").

[*P48] Respondent also objects to the board's findings with respect to the affidavit of disqualification filed against the trial judge, claiming that he had a reasonable, factual basis for making the statements in his affidavit of disqualification and that he never claimed that the trial judge placed an ex parte telephone call to the assistant prosecutor. We conclude, however, that respondent's affidavit of disqualification in this matter plainly accuses the assigned judge of participating in ex parte communications (regardless of who may have initiated the communication) [**25] and prejudging the case before him without hearing respondent's evidence. Therefore, these arguments are without merit. Accordingly, we adopt the board's findings of fact and misconduct.

Count Five

[*P49] Count Five relates to respondent's representation of a client in a postconviction proceeding. Judge Eyster had presided over a jury trial in which the client had been convicted of three counts of intimidation and one count of having weapons while under disability. An appellate court later overturned the intimidation convictions but affirmed the conviction for having weapons while under disability. *State v. Wilhelm, Knox App. Nos. 03-CA-25 and 03-CA-26, 2004 Ohio 5522, P 64.*

[*P50] Claiming that the judge harbored a bias against his client, his client's family, and himself,

respondent filed an affidavit of disqualification against him. In that affidavit, respondent averred not only that the judge bore a "substantial grudge" based upon the appellate court's ruling but also that he had engaged in improper ex parte communications with the county prosecutor and had "made up his mind to reject" the defendant's request to restore his firearm rights.

[*P51] Chief Justice Moyer denied the affidavit of disqualification. [**26] *In re Disqualification of Eyster* (Apr. 4, 2007), case No. 07-AP-23. The board observed that the Chief Justice had relied on the affidavits of the judge, the prosecuting attorney, and assistant prosecuting attorney denying any ex parte communications, ill will, or bias. At respondent's disciplinary hearing, the judge and the prosecuting attorney expressly denied having any ex parte conversations about pending cases. The board also rejected as false respondent's allegations in the affidavit of disqualification that the judge and a visiting judge had engaged in inappropriate ex parte communications about another of respondent's cases while it was pending before the visiting judge.

[*P52] Therefore, the board concluded that respondent's conduct with respect to this count violated *Prof.Cond.R. 3.1*, *3.5(a)(6)*, *8.2(a)*, *8.4(c)*, *8.4(d)*, and *8.4(h)*, and *Gov.Bar R. IV(2)*.

[*P53] Respondent objects to these findings of misconduct, arguing that he had a reasonable factual basis for making the allegations in his affidavit of disqualification. Respondent's evidence, however, consisted mainly of his own testimony that he had observed the judge enter his chambers with the prosecutor and the assistant prosecutor [**27] on

more than one occasion and his *speculation* that they were engaging in improper ex parte communications regarding pending cases.

[*P54] Because the record does not weigh heavily against these findings, we defer to the panel's credibility determinations and adopt the board's findings of fact and misconduct. See *Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St.3d 164, 2006 Ohio 550, 842 N.E.2d 35, P 24.*

Count Six

[*P55] In December 2007, respondent, on behalf of his wife and two other plaintiffs, filed a derivative action against certain officers, directors, and employees of the Apple Valley Property Owners Association ("AVPOA"). The case was assigned to Judge Eyster.

[*P56] Respondent filed an affidavit of disqualification on behalf of his wife, seeking to remove Judge Eyster from the action. In that affidavit, respondent's wife alleged that Judge Eyster harbored a personal bias against respondent and his family and that he had a conflict of interest based upon his wife's employment as the President and Director of the Foundation for Knox Community Hospital. Because the AVPOA is the only nongovernmental organization with a voting member or director of the foundation, and because nine of the foundation's 36 [**28] directors are also members of the AVPOA, respondent reasoned that the defendants "essentially employ[ed] and otherwise supervise[d] the judge's spouse."

[*P57] Accordingly, respondent and his wife alleged that Judge Eyster's continued participation in the case would violate the following [HN26] Canons

of the former Code of Judicial Conduct: [3] 3(E)(1)(a) (requiring a judge to disqualify himself in a proceeding in which he has a personal bias or prejudice concerning the party or the party's lawyer), 3(E)(1)(c) (requiring a judge to disqualify himself in a proceeding in which he or his spouse has an economic interest in the subject matter in controversy or in a party to the proceeding), and 3(E)(1)(d)(i) and (iv) (requiring a judge to disqualify himself in a proceeding in which he or his spouse is a party to the proceeding, or an officer, director, or trustee of a party, or is known by the judge to have an economic interest that could be substantially affected by the proceeding). 78 Ohio St.3d CLXXVI. Chief Justice Moyer denied the affidavit of disqualification. *In re Disqualification of Eyster* (Feb. 8, 2007), case No. 08-AP-001.

3 These Canons were superseded by a new Code of Judicial Conduct on March [**29] 1, 2009.

[*P58] Respondent filed an amended complaint in the underlying case in November 2008. The following January, the trial court dismissed or granted judgment on the pleadings on all but one count of that complaint. The only issue that remained was whether AVOPA had an obligation to deliver certain financial records to respondent's clients. Respondent appealed the dismissals on the day that they were entered.

[*P59] While his appeal was pending, respondent issued a subpoena to Judge Eyster's wife, seeking a list of all donors to the Knox County Community Hospital and the Foundation for the hospital during her employment. That subpoena was not related to the only pending issue in the case. The board

concluded that respondent's goal in issuing the subpoena to the judge's wife was to "resurrect" his previous affidavit of disqualification.

[*P60] Respondent then filed a request that the judge recuse himself. In that document, he alleged that the plaintiffs "believe the trial court is biased against them because the trial court has ruled against them at every opportunity, especially when a large donor to the hospital that employs the Judge's wife has been involved." Specifically, respondent alleged that [**30] a local bank, which was not a party to the litigation, nevertheless had "a major role in the underlying litigation, [and] ha[d] contributed at least $ 100,000.00 to the local hospital that employs [the judge's] spouse." Respondent further stated that unless the judge recused himself, plaintiffs would be forced to file another affidavit of disqualification with the Chief Justice.

[*P61] Based upon these findings of fact, the board concluded that respondent's conduct violated *Prof.Cond.R. 3.1*, *8.4(d)*, and *8.4(h)*. It concluded, however, that the evidence did not clearly and convincingly establish that respondent's conduct with respect to Count Six had violated *Prof.Cond.R. 8.4(c)*.

[*P62] Respondent submits nine objections to the board's findings of misconduct with respect to Count Six. The essence of these objections is twofold. First, respondent contends that his discovery efforts were valid and directed at obtaining evidence to support a new claim for seeking Judge Eyster's disqualification. Second, he asserts that because the trial court did not rule that his conduct was frivolous or an abuse of process, and the judge's wife was not harmed by his issuance of the subpoena, his conduct cannot

constitute [**31] a disciplinary violation.

[*P63] Despite respondent's claims to the contrary, the record clearly and convincingly demonstrates that the basis for both his second request for Judge Eyster's recusal and his January 8, 2008 affidavit of disqualification was his belief that the judge (1) harbored a bias against him and his family and (2) had a conflict of interest in the litigation as a result of his wife's employment. Respondent first alleged that AVPOA, a party to the action, employed the judge's wife because it had the right to appoint one director of the hospital foundation for which she worked. Respondent's second request for recusal was a variation on that theme, focusing upon the alleged financial contribution of a nonparty bank to the wife's employer.

[*P64] We acknowledge that Chief Justice Moyer had previously disqualified the judge in another case based upon the "apparent interest [of the judge and his wife] in the financial success of the hospital and, therefore, the financial success of those entities that make significant contributions to it." *In re Disqualification of Eyster* (Feb. 06, 2006), Supreme Ct. No. 06-AP-2. In that case, however, a conflict arose because a party to the action [**32] made significant financial contributions to the hospital's capital campaign.

[*P65] Here, in contrast, respondent subpoenaed Judge Eyster's wife in an effort to uncover evidence that a *nonparty* had made a significant financial contribution to her employer. Respondent presented no evidence that the bank had any connection to the litigation other than that it might have possessed

some of AVPOA's financial records. Thus, the basis of respondent's second request for recusal -- a nonparty's financial contribution to the hospital -- was even more attenuated than his original argument that AVPOA employed the judge's wife. These facts alone would not be sufficient to require Judge Eyster to disqualify himself pursuant to Jud.Cond.R. 2.11 or Canon 2(E) of the former Code of Judicial Conduct, 78 Ohio St.3d CLXXVI (requiring a judge to disqualify himself or herself based upon certain relationships to or interests in the parties or the subject matter of the litigation).

[*P66] The discovery tactics that respondent elected to employ to further his crusade to disqualify Judge Eyster are also troubling. While respondent could have served the subpoena upon the hospital's or the foundation's custodian of the records, [**33] thereby permitting the hospital or foundation to route the subpoena to the appropriate person for compliance, he elected to personally target Judge Eyster's wife. Despite respondent's claims to the contrary, the purpose of this tactic was to manufacture yet another argument that the judge could no longer serve as an impartial judge in the underlying proceeding by emphasizing a thin connection between the judge's wife and the defendants in the underlying lawsuit.

[*P67] Based upon the foregoing, we reject respondent's contention that his discovery efforts were a legitimate means to seek evidence to support respondent's attempt to have the judge disqualified from the lawsuit. And we have already rejected his contention that a trial court's failure to find an abuse of process or sanction him for frivolous conduct

prevents this court from finding a disciplinary violation based upon the same conduct. See Counts Three and Four, infra. Accordingly, we overrule respondent's objections with respect to Count Six and find that his conduct in directly subpoenaing Judge Eyster's wife and submitting his second request for recusal in the underlying action violated *Prof.Cond.R. 3.1* and *8.4(d)* and *(h)*. We [**34] also agree with the board's conclusion that the alleged violation of *Prof.Cond.R. 8.4(c)* has not been proven by clear and convincing evidence and therefore dismiss it.

Count Seven

[*P68] In June 2005, respondent and his wife were named as defendants in a lawsuit filed in the Mount Vernon Municipal Court. The case was transferred to the court of common pleas and assigned to Judge Eyster.

[*P69] In January 2006, respondent prepared an affidavit of disqualification for his wife to sign, in which he stated, "Judge Otho Eyster has clearly violated Canon 3(E)(1), (1)(a), (1)(c), (1)(d)(iv), and (2) of the [former] Ohio Judicial Code of Conduct, and should be disqualified from sitting in this case." On February 6, 2006, Chief Justice Moyer granted the affidavit of disqualification to avoid the appearance of impropriety, stating, "While I see no evidence in the record before me to suggest that Judge Eyster has shown any improper bias or prejudice in favor of the plaintiff, I conclude that he should not remain as trial judge on this case." *In re Disqualification of Eyster* (Feb. 2, 2006), case No. 06-AP-2.

[*P70] The board concluded that respondent's statements in the affidavit of disqualification violated DR 1-102(A)(5), [**35] 1-102(A)(6), [HN27] 7-

102(A)(5) (prohibiting a lawyer from knowingly making a false statement of law or fact), and 7-102(A)(6) and *Gov.Bar R. IV(2)*.

[*P71] Respondent asserts that he had a reasonable basis in fact to assert that Judge Eyster had clearly violated Canons 3(E)(1), (1)(a), (1)(c), (1)(d)(iv), and (3)(E)(2) of the former Code of Judicial Conduct. 78 Ohio St.3d CLXXVI. Specifically, he contends that Judge Eyster should have disqualified himself from the case because his impartiality could reasonably be questioned based upon the economic interest of his wife in maintaining charitable contributions to her employer. Respondent may have had cause to believe that the judge had reason to recuse himself. However, respondent could not have had a reasonable basis in fact to believe that the judge *had clearly violated* each of the Canons cited in his affidavit of disqualification because two of the Canons require a judge to have knowledge of an existing conflict while the third imposes a duty upon a judge to make reasonable effort to obtain such knowledge. See Canons 3(E)(1)(c), 3(E)(1)(d)(iv), and 3(E)(2) of the former Code of Judicial Conduct, 78 Ohio St.3d CLXXVI.

[*P72] In this instance, respondent did [**36] not suggest that based upon the facts known to him, the judge may have violated one of several alternative rules. Instead, he unequivocally stated that the judge had *clearly violated* multiple provisions of the Code of Judicial Conduct, thereby rendering at least one of his statements patently false. Therefore, we accept the board's finding that respondent has violated DR 1-102(A)(5), 1-102(A)(6), 7-102(A)(5), and 7-102(A)(6) and *Gov.Bar R. IV(2)*.

Sanction

[*P73] [HN28] When imposing sanctions for attorney misconduct, we consider relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St.3d 424, 2002 Ohio 4743, 775 N.E.2d 818, P 16.* In making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in Section 10(B) of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). *Disciplinary Counsel v. Broeren, 115 Ohio St.3d 473, 2007 Ohio 5251, 875 N.E.2d 935, P 21.* Because each disciplinary case is unique, we are not limited to the factors specified in the rule [**37] but may take into account "all relevant factors" in determining what sanction to impose. BCGD Proc.Reg. 10(B).

[*P74] As mitigating factors weighing in favor of a less severe sanction, the board found that respondent does not have a prior disciplinary record, has made full and free disclosure to the board, and has demonstrated a professional, respectful, and cooperative attitude in the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(a) and (d).

[*P75] The board also found a number of aggravating factors weighing in favor of a more severe sanction. First, the board found that respondent's actions demonstrated a dishonest and selfish motive. BCGD Proc.Reg. 10(B)(1)(b). It observed that respondent abused his position as a lawyer by issuing subpoenas to investigate persons

who had posted negative statements about him on the Internet and persons with whom he was personally involved in litigation. The board further found that respondent's allegations against judges and prosecutors, and his explanations of his actions, were false and dishonest.

[*P76] The board also found that respondent had engaged in a pattern of misconduct and committed multiple offenses by serving subpoenas for his own personal interests, [**38] repeatedly making false allegations against judges, prosecutors, and assistant prosecutors, and utilizing his position as a lawyer as a "license to harass." BCGD Proc.Reg. 10(B)(1)(c) and (d). It stated that respondent had refused to acknowledge the wrongful nature of his conduct, citing the panel's observation that his apologies and acknowledgment of wrongdoing lacked sincerity and were primarily "lip-service," and that his demeanor and testimony demonstrated that he "believed his actions were justified and it is the judges and the other individuals, of whom he complains, who are wrong." BCGD Proc.Reg. 10(B)(1)(g). Last, the board cited the vulnerability and resulting harm to the victims of respondent's misconduct, including the judges and prosecutors whose reputations were harmed, innocent third parties who were inconvenienced by respondent's subpoenas, and Judge Eyster's wife, who testified that respondent's subpoena caused her significant emotional distress. BCGD Proc.Reg. 10(B)(1)(h).

[*P77] Relying upon *Disciplinary Counsel v. Gardner*, *99 Ohio St.3d 416*, *2003 Ohio 4048*, *793 N.E.2d 425*; *Disciplinary Counsel v. Frost*, *122 Ohio St.3d 219*, *2009 Ohio 2870*, *909 N.E.2d 1271*; and

Disciplinary Counsel v. Baumgartner, 100 Ohio St.3d 41, 2003 Ohio 4756, 796 N.E.2d 495, [**39] and noting that respondent's conduct occurred over a four-year period and involved multiple cases, relator recommends that respondent be indefinitely suspended from the practice of law. Citing extensive case law, respondent argued that the appropriate sanction for his misconduct is a public reprimand.

[*P78] Two of the three panel members found the case law cited by relator to be more on point than the case law submitted by respondent. Recognizing that we have stated that "[u]nfounded attacks against the integrity of the judiciary require an actual suspension from the practice of law," *Gardner at P 36,* and recognizing that respondent's conduct resembled that of the attorney in *Frost,* the majority of the panel recommended that respondent be indefinitely suspended from the practice of law.

[*P79] The third member of the panel, however, stated that he would reject findings in Counts Three and Four that respondent had engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Citing his belief that the respondent was "generally remorseful" for his conduct, which occurred when he was a relatively inexperienced attorney, and implying that the other members of the panel had not sufficiently [**40] "divorce[d] [their] personal admiration for the respected jurist, who currently serves as the Chairman of the Board of Commissioners on Grievances and Discipline, at the center of most of the charges against Respondent," the dissenting panelist stated that he would recommend a two-year suspension with 18 months stayed.

[*P80] The board adopted the findings of fact, conclusions of law, and recommendation of the panel's majority and recommends that respondent be indefinitely suspended from the practice of law.

[*P81] Respondent challenges the board's (1) rejection of certain mitigating evidence, (2) conclusions that his actions were dishonest and selfish and that they resulted in harm to vulnerable persons, and (3) recommendation that he be indefinitely suspended from the practice of law. Having carefully considered each of these arguments, we conclude that the record does not weigh heavily against the hearing panel's findings. Accordingly, we overrule respondent's objections in this regard and accept the findings of the panel and board with regard to the aggravating and mitigating factors present in this case. See, e.g., *Cincinnati Bar Assn. v. Statzer, 101 Ohio St.3d 14, 2003 Ohio 6649, 800 N.E.2d 1117, P 8*; [**41] *Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St.3d 164, 2006 Ohio 550, 842 N.E.2d 35, P 24.*

[*P82] As an additional factor, during the course of these disciplinary proceedings, respondent sought the assistance of the Ohio Lawyers Assistance Program ("OLAP") and, in July 2008, entered into a monitoring contract that required him to obtain a drug and alcohol assessment, resume counseling, contact a psychiatrist for an evaluation of his medications, call OLAP three times a week, and have his past treating professionals provide OLAP with written reports regarding his diagnosis, treatment plan, prognosis, and compliance.

[*P83] During his deposition in October 2008, respondent testified that he had been seeing a

psychiatrist to regulate certain medications and working with a psychologist on relaxation techniques to control inappropriate aggression that might have been a contributing factor to his misconduct. Although respondent was in compliance with the OLAP contract for several months, he elected to terminate his participation in April 2009. Therefore, we consider these unaddressed psychological issues as a factor in aggravation.

[*P84] Respondent also objects to the board's reliance upon *Gardner*, *Frost*, and [**42] *Baumgartner* and suggests that his conduct is more akin to that of the attorneys in *Disciplinary Counsel v. Mills (2001), 93 Ohio St.3d 407, 408, 2001 Ohio 1315, 755 N.E.2d 336* (imposing a public reprimand for a single profanity-laced outburst during which a magistrate believed that the attorney was going to physically assault him); *Disciplinary Counsel v. Grimes (1993), 66 Ohio St.3d 607, 609-610, 1993 Ohio 125, 614 N.E.2d 740* (imposing a public reprimand on an attorney who made inappropriate statements about a judge to a journalist and made additional inappropriate statements to a judge during a hearing; the parties had stipulated that the statements were the "result of emotional stresses created by a set of unusual circumstances that are unlikely to recur"); *Disciplinary Counsel v. Jackson (1999), 84 Ohio St.3d 386, 387-388, 1999 Ohio 485, 704 N.E.2d 246* (imposing a public reprimand on an attorney who failed to maintain his composure and used obscenities, vulgar language, and racial epithets during a deposition); *In re Complaint against Harper (1996), 77 Ohio St.3d 211, 229, 673 N.E.2d 1253* (imposing a public reprimand on a judge who

approved campaign advertisements that diminished public confidence in the judiciary); *Columbus Bar Assn. v. Riebel (1982), 69 Ohio St.2d 290, 23 O.O.3d 279, 432 N.E.2d 165* [**43] (imposing a public reprimand on an attorney who directed offensive and abusive language toward an opposing party on several occasions); and *Cincinnati Bar Assn. v. Gebhart (1982), 69 Ohio St.2d 287, 289, 23 O.O.3d 277, 431 N.E.2d 1031* (imposing a public reprimand for an attorney who made false statements to a court and expressed a discourteous demeanor toward opposing counsel). Therefore, respondent urges this court to publicly reprimand him or to impose a fully stayed six-month suspension.

[*P85] The cases cited by respondent, however, address single incidents of misconduct or several incidents that occurred during the course of a single case. Respondent's conduct, in contrast, involves multiple incidents of misconduct that have occurred in a series of cases spanning several years. Respondent has (1) recklessly filed affidavits of disqualification and other court documents containing unfounded accusations against two judges, (2) twice misused his power as an attorney to issue subpoenas to further his personal agenda, (3) misused his authority as a notary public, (4) accused a judge and a prosecutor of engaging in ex parte communications about pending cases, and (5) accused two judges of [**44] engaging in ex parte communications regarding another pending matter. His pattern of unfounded, intemperate, and unprofessional attacks on the judicial system and his misuse of the power entrusted to him by virtue of his stature as an attorney demonstrate a profound disrespect for the

legal profession.

[*P86] This conduct is most comparable to that of the attorney in *Frost, 122 Ohio St.3d 219, 2009 Ohio 2870, 909 N.E.2d 1271.* In that case, the attorney falsely accused several Cuyahoga County Common Pleas Court judges and the county prosecutor of bias and corruption in the execution of their official duties, repeatedly leveled unfounded accusations of racial bias and other impropriety against a federal district court judge, and filed a baseless defamation suit against two attorneys who served as her opposing counsel in a sexual-harassment case. *Id. at P 5, 18, 25.*

[*P87] Aggravating factors in *Frost* included acts of dishonesty, a pattern of misconduct involving multiple offenses, the attorney's failure to acknowledge the wrongfulness of her conduct, and the considerable harm to the public officials she attacked as well as the judiciary as a whole. *Id. at P 37,* citing BCGD Proc.Reg. 10(B)(1)(b), (c), [**45] (d), (g), and (h). Moreover, like respondent's misconduct in this case, we observed that Frost's misconduct may have been a "by-product of unaddressed mental-health issues." *Id. at P 43.* Therefore, we indefinitely suspended Frost from the practice of law and conditioned her reinstatement upon the submission of proof, to a reasonable degree of medical certainty, that she was mentally fit to return to the competent, professional, and ethical practice of law. Id.

[*P88] Based upon the foregoing, we agree that the appropriate sanction for respondent's misconduct is an indefinite suspension. And based upon our concern that respondent has underlying mental-health issues that may have contributed to his

misconduct, not only must respondent comply with the requirements for reinstatement set forth in *Gov.Bar R. V(10)(B)*, but he must also provide proof that to a reasonable degree of medical certainty, he is mentally fit to return to the competent, professional, and ethical practice of law. Costs are taxed to respondent.

Judgment accordingly.

BROWN, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

APPENDIX B

BEFORE THE BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

In Re:

Case No. 09-022

Complaint against
Scott Pullins
Attorney Reg. No. 0076809

Respondent,

Findings of Fact,
Conclusions of Law and
Recommendation of the
Board of Commissioners on
Grievances and Discipline
of the Supreme Court of
Ohio

Disciplinary Counsel

Relator.

This matter was heard on October 13, 2009 and October 29, 2009 in Columbus, Ohio, before panel members Judge Joseph J. Vukovich of Mahoning County, Alvin R. Bell of Hancock County,

and Charles E. Coulson of Lake County, Chair. None of the members of the panel was a member of the probable cause panel that reviewed this complaint or resided in the appellate district from which the complaint arose.

The hearing was held on the allegations contained in the first amended complaint filed on March 25, 2009. Michael Murman appeared as counsel for Relator. He was a special counsel appointed by Disciplinary Counsel to handle the investigation and prosecution of this formal complaint. Scott Pullins represented himself pro se.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of Ohio on November 10, 2003. The first amended complaint contained seven counts alleging violations of the Code of Professional Responsibility, the Rules of Professional Conduct, and Gov. Bar R IV and V. The panel finds the following by clear and convincing evidence, as to each count in the complaint.

COUNT I

On or about January 17, 2006 the Respondent, on behalf of himself, his daughter, and his wife's parents, filed an action in the Knox County Court of Common Pleas wherein Respondent was seeking a civil protection order against Mr. Carl F. Holmes. This case, *Scott A. Pullins et al* V. *Carl F. Holmes*, 06ST010022, was

assigned to Judge Otho Eyster, Presiding Judge of the Knox County Court of Common Pleas.

At the time of the filing of this action, Respondent filed a petition for a civil stalking protection order, asking the court to issue an ex parte protection order under R.C. 2903.214 (D). The Knox County Court of Common Pleas followed its local "Rules of Practice and Procedure," in ruling on the request for an ex parte protection order. Local Rule 22, Civil Protection Order Hearings, states, in part, "Hearings on ex parte orders may be conducted upon affidavit only, at the discretion of the court." On the same day it was filed, January 17, 2006, and in compliance with the above Knox County Common Pleas Court local rule, Judge Eyster considered the request for an ex parte order upon the affidavits filed by Respondent, and denied the request. The court set the matter for a full hearing on February 3, 2006. Both parties to this lawsuit filed requests to continue the final hearing. The full hearing was set for March 3, 2006.

On or about January 20, 2006, and then again on or about January 23, 2006, Respondent filed disciplinary grievances against Judge Eyster with the Office of Disciplinary Counsel. On February 21, 2006, prior to the court conducting a full hearing on Respondent's petition for protection order, Respondent filed an affidavit of disqualification against Judge Eyster with the Supreme Court of Ohio.

Respondent's affidavit of disqualification of Judge Eyster was denied by the Supreme Court on March 16, 2006. The grievances filed by Respondent with Disciplinary Counsel were dismissed on March

20, 2006, with no finding of misconduct by Judge Eyster. On March 20, 2006, Respondent filed a notice of voluntary dismissal of the lawsuit.

At the time that Respondent filed the affidavit for the disqualification of Judge Eyster with the Supreme Court, Judge Eyster had not waived confidentiality regarding any grievance filed against him, and no formal complaint had been filed with the Board of Commissioners on Grievances and Discipline. Thus, the fact that the grievances were filed was confidential. Respondent stated that he was aware that all documents and proceedings relating to the grievances filed by him were confidential. Respondent testified that at the time he filed the affidavit of disqualification which revealed that grievances were filed against Judge Eyster, he was aware of the Supreme Court case of In re Disqualification of Krueger (1995), 74 Ohio St.3d 1267.1

The Respondent's affidavit of disqualification filed with the Supreme Court contained the following accusations against, and statements about Judge Eyster:

1. "The judge (Judge Eyster) has violated Canons 1, 2 and 3 of the Ohio Judicial Code of Conduct."

2. Judge Eyster apparently disagrees with this law." (Emphasis by Respondent) Respondent Is referring to R.C. 2903.214 (D)(1).

3. "Eyster summarily denied the petition for an ex parte order and refused to grant an ex parte hearing."[1]

4. "Judge Eyster simply ignored the Petitioner's motion for an ex parte hearing"

5. "Petitioner has spoken with other local attorneys who have informed him that Judge Eyster routinely refuses to hold ex parte hearings and rarely grants permanent protection orders."

6. "Petitioner has brought three separate formal complaints against Judge Eyster with the Office of Disciplinary Counsel regarding Judge Eyster's refusal to follow Ohio law and

[1] See Tr. 564 and 565. The Supreme Court in In re Disqualication of Krueger, reminds an attorney who is filing an affidavit of disqualification that "Gov.Bar R. V(11)(E) requires that disciplinary complaints remain private until and unless formal proceedings begin before the Board of Commissioners on Grievances and Discipline." See In re Disqualification of Krueger (1995), 74 Ohio St.3d 1267, Disciplinary Counsel v. Spicer, 106 Ohio St.3d 247, 2005-Ohio-4788, In re Disqualification of Long (1996), 75 Ohio St.3d 1212. Respondent testified that he was not aware of the Board of Commissioners on Grievances and Discipline, Opinion No. 98-3 (Apr. 3, 1998) that holds it is improper to state in an affidavit of disqualification that an attorney has filed a disciplinary grievance against a judge.

Ohio civil rules concerning the above matters." (Rel. Ex. I)

The panel finds that Judge Eyster had not violated the Ohio Judicial Code; Judge Eyster did not simply ignore Petitioner's motion for an ex parte hearing but, in fact, reviewed the affidavit and made a ruling the same day.

The panel further finds that Respondent knew that he should not reveal the fact that he had filed grievances against Judge Eyster with the Office of Disciplinary Counsel, but did so anyway based upon his belief that an affidavit of disqualification directed to the Chief Justice, number one, was private to some extent as opposed to sending out a press release. Therefore the panel finds that the above acts of Respondent violated the Code of Professional Responsibility, specifically:

1. DR 1-102(A)(5) [conduct prejudicial to the administration of justice];

2. DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law];

3. DR 7-106(C)(6) [undignified or discourteous conduct which is degrading to a tribunal];

4. DR 8-102(B) [knowingly make a false accusation against a judge].

Respondent violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance].

Respondent violated Gov. Bar R. V(11)(E), requiring that all proceedings and documents relating to review and investigation of grievances shall be private.

The panel does not find by clear and convincing evidence that Respondent violated DR 1-102(A)(4) [conduct involving dishonesty, fraud deceit, or misrepresentation] as it relates to Count I, and recommends dismissal of the same.

COUNT II

On September 13, 2005, Respondent was appointed by Judge Eyster to serve as a guardian ad litem in the case of *Regina Cotton v. Robert Cotton*, Knox County Court of Common Pleas case number 04-DC-070153. On February 1, 2006, Respondent filed a report and recommendations of the guardian ad litem in the above case.

In Respondent's report and recommendations of the guardian ad litem, Respondent made the following statements:

1. "On July 13, 2005 . . . as is his custom, Judge Otho Eyster refused to hold an Ex Parte Hearing and summarily denied the request for an Ex Parte Protection Order."

2. "Apparently Judge Eyster does not agree with this portion of Ohio law [R.C. 2903.214 (D)(1)] so he routinely ignores it."

3. "In my years of practicing law and working with appointed and elected officials, this is the worst example that I have ever seen of negligence and incompetence in carrying out the duties of a public official."

4. "Unfortunately, Judge Otho Eyster and this Court have failed her (Regina Cotton) significantly in her time of greatest need " (Rel. Ex. 4)

Respondent's conduct in making the above statements violated the Code of Professional Responsibility, specifically:

1. DR 1-102(A)(5) [conduct prejudicial to the administration of justice];

2. DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law];

3. DR 7-106(C)(6) [undignified or discourteous conduct which is degrading to a tribunal].

Respondent's conduct by making the above referenced statements also violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the

sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance].

COUNT III

On April 3, 2006, Respondent as the attorney for his wife, Kathryn Pullins and his father- in-law, Stephen Elliot, filed a lawsuit in the Knox County Court of Common Pleas against Carl F. Holmes, et al. The case caption is Kathryn Elliot Pullins, et al., v. Carl F. Holmes, et aL, Case Number 061N040168. Contemporaneous with filing the complaint, Respondent filed a motion for a temporary restraining order and attached an affidavit in support of the motion. (Rel, Ex. 5)

On its face, the affidavit in support of the motion for temporary restraining order appears to be signed by Respondent's wif Kathryn Elliot Pullins, as plaintiff. Respondent's wife's signature on the affidavit also appears to be have been notarized by Respondent. The affidavit states in its totality the following: "Now comes Plaintiff Kathryn Elliot Pullins on April 3, 2006, and swears that the information contained in the previously filed complaint and the motion for a temporary restraining order filed herein is all true and accurate to the best of my knowledge and belief."

The affidavit was not signed by Kathryn Pullins, but signed instead by Respondent himself. Respondent maintains that during depositions, "[M]y wife and I discovered that a signature on a filing wasn't hers. Apparently I had gotten her permission to sign the document over the phone

and failed to indicate so on the filing. My wife and I have a legal right to sign legal documents on each other's behalf because we both have very broad powers of attorney."[2]

Respondent notarized the purported signature of Kathryn Elliot Pullins. The affidavit reads as if Kathryn Pullins appeared before Respondent. She did not. Respondent does not indicate on the affidavit that he was signing his wife's name. Respondent placed his notary stamp and seal upon the affidavit notarizing his own signing of his wife's name. (Tr. 361-362)

Respondent's conduct, as alleged above, violated the Code of Professional Responsibility, specifically:

1. DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation];

2. DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness –to practice law]; and

3. DR 7-102(A)(4) and (6) [in his representation of a client a lawyer shall not knowingly use perjured testimony or false evidence, or participate in the creation or preservation of evidence when he knows or it is obvious that it is false].

[2] Rel. Ex. 6, the October 11, 2007 letter of Respondent to Assistant Disciplinary Counsel.

COUNT IV

On May 24, 2006, Respondent, Scott A. Pullins, filed a pro se lawsuit against Thomas Collier, a member of the Ohio House of Representatives, seeking relief for alleged defamation. Respondent filed this lawsuit in the Knox County Common Pleas Court, and it is captioned Scott A. Pullins v. Thomas Collier, Case No. 06 OT 050242.

The case was assigned to Judge Thomas P. Curran, sitting by assignment. As the defendant was a member of the House of Representatives, the case was defended by the office of the Ohio Attorney General. On June 30, 2006, the office of the Ohio Attorney General, on behalf of defendant Thomas Collier, filed a Civ. R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction, stating that this action must be brought before the Ohio Court of Claims.

On October 20, 2006, a hearing was held before Judge Curran in which Respondent, representing himself, and an assistant attorney general appeared as counsel. At the hearing, Respondent provided the court with law suggesting that the court should not grant the defendant's motion to dismiss, but should instead "hold the instant case in suspense, pending a ruling by the Ohio Court of Claims."

The parties agreed that the case would be held in suspense, and depending upon the court of claims' decision, the Knox County Court of Common Pleas would either dismiss the instant action or

proceed further on the merits. Judge Curran then ordered, "accordingly, this case shall be placed in suspense, pending a decision by the Court of Claims." That order was signed on October 20, 2006, and copies were given to Respondent and the assistant attorney general. (Rel. Ex. 16)

While the above case of Pullins v. Collier, was still in suspense, and knowing that the Court of Claims had not yet decided the issue of subject matter jurisdiction, Respondent, on December 26, 2006, caused to be issued two subpoenas under this case caption and case number. Respondent failed to serve opposing counsel with the required notice of the issuance of these subpoenas. (Rel. Ex. 17)

Both subpoenas contained duces tecum requests. One subpoena was made out to an organization called ECR, and the other to an individual by the name of Michael J. Hawk. Neither ECR nor Michael J. Hawk had anything to do with, any connection with, or any relevance to the Pullins v. Collier case. The information Respondent requested were "documents that may lead to the identity of Internet posters known as "buckeye for OS" and "curious mind ".

According to Respondent, he had read disparaging comments made about his family and his law practice on websites. Some of these comments were started when posters to the website made comments that Respondent had sued Collier. Respondent's goal was to learn the identity of the posters. None of the information sought by Respondent in these subpoenas had any relevance to the pending case. The information sought from these two subpoenas would only satisfy personal

interests of the plaintiff as to the identity of his critics.

It came to the attention of the Clerk of the Knox County Common Pleas Court that Mr. Pullins had issued two subpoenas on a case in suspension. The Clerk of Courts notified her lawyer, the Knox County Prosecuting Attorney. On January 29, 2007, the Prosecuting Attorney, on behalf of the Knox County Clerk of Courts, filed a notice with Judge Curran of the issuance of the subpoenas on a stayed case. (Tr. 36)

On January 30, 2007, Respondent, in his first attempt to not have to explain his actions in issuing the two subpoenas, filed an objection to the clerk's giving notice of the filing of the two subpoenas.

On February 23, 2007, Judge Thomas Curran filed an order entitled "Order to Attorney Scott Pullins to explain issuance of two civil subpoenas daces tecum while this case was in suspense." The order required Respondent to appear before the court at 12:00 p.m. on March 19, 2007 and, among other things, to defend against the suggestion of an apparent abuse of process.
(Rel. Ex. 17)

Upon learning of Judge Curran's order, in an apparent second attempt to not have to explain his issuing of the two subpoenas to Judge Curran, Respondent filed a notice of voluntary dismissal (Civ. R. 41 (A)) of the lawsuit in Knox County. A few days later, Respondent filed a Civ. R. 41(A) second notice of dismissal in the Court of Claims, Despite the dismissals, Judge

Curran intended to proceed with the March 19, 2007 hearing to have Respondent explain the issuance of the two subpoenas.

On March 7, 2007, in a third attempt to stop his being required to appear before Judge Curran to explain his issuance of the two subpoenas, Respondent filed a lawsuit against Judge Curran. Respondent filed a lawsuit in the Knox Count Court of Appeals, case number 07-CA-
04, which was a complaint in prohibition against the court (Judge Curran) taking any further action. Respondent asked the court of appeals to issue a writ of prohibition against Judge Curran permanently enjoining and prohibiting him from further proceedings at the common pleas level.

Judge Curran, through his counsel, filed a motion to dismiss. The court of appeals agreed with Judge Curran's motion and the case was dismissed on the morning of March 19, 2007. Respondent's ordered appearance was scheduled to take place at noon that same day.

Respondent did not appear for the hearing, having called the court claiming that he was ill. Judge Curran reset the hearing to May 31, 2007, as the time for Respondent to explain the issuance of the two subpoenas. (Tr. 62)

On April 5, 2007, in a fourth attempt to prevent his having to explain the issuance of the two subpoenas, Respondent filed an affidavit of disqualification against the Judge Curran with the Supreme Court of Ohio. In Respondent's affidavit of disqualification, he states the
following:

1. "Court's conduct in this matter is biased and prejudiced against me and is apparently in violation of a number of Judicial Canons." The Respondent then specifically enumerates: Canon 3(B)(2)[a judge shall not be swayed by partisan interests, public clamor, or fear of criticism]; ,Canon 3(B)(5)[a judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice]; Canon 3(B)(7)[a judge shall not initiate, receive, permit, or consider communications made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding except (certain enumerated circumstances that are not applicable here)]; Canon 3(B)(9)[while a proceeding is pending or impending in any court, a judge shall not make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.]; and finally Canon 3(E)(1)[a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party or party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings; and (d)(v)

Is to the judge's knowledge likely to be a material witness in the proceeding"

2. Judge Curran is no longer acting as an impartial judge, but has already decided key evidentiary and legal matters and has crossed over to acting as an advocate."

3. "Judge Curran has already prejudged this issue without affording me an opportunity to argue my case." (Rel. Ex. I)

Respondent also alleges in the affidavit of disqualification, that Judge Curran made an ex parte telephone call to Mr. Broeren, the Knox County Assistant Prosecuting Attorney. Both Judge Curran and Assistant Prosecuting Attorney Broeren testified that no such telephone call ever occurred. (Tr. 53)[3]

On April 26, 2007, Chief Justice Moyer denied Respondent's affidavit of disqualification. Respondent's justification for issuing the two subpoenas on a suspended case was that they were "prepared and served in preparation to ask the Knox County Common Pleas Court for a gag order in the underlying jury case." The panel finds this

[3] In weighing the credibility, demeanor and reasonableness of the witnesses testifying on this issue (the Respondent, Judge Curran and Attorney Broeren), the Panel determined that this allegation was false.

assertion by Respondent not credible and merely an excuse.[4]

Respondent's explanation for his failure to serve copies of the two subpoenas on opposing counsel was that he did not intentionally fail to serve opposing counsel; that one of the subpoenas was never served and that he remembered mailing a copy of the other subpoena to the opposing counsel. (Tr. 510-512) The panel finds Respondent's excuse to be flimsy and that Respondent's failure to serve copies of the subpoena on opposing counsel was an intentional act.[5]

On March 29, 2007, while the case of *Pullins v. Collier*, (06 OT 050242) was still in suspension, Respondent issued a second subpoena to Michael Hawk, commanding him to appear at the hearing set for May 31, 2007. This is the same Michael Hawk who had been issued a subpoena previously. Hawk had absolutely nothing to do with any of the merits or proceedings of the pending matter. On the same day, March 29, 2007, Respondent subpoenaed the Knox County Prosecuting Attorney, requiring him to bring all records in the above matter, and subpoenaed the Mount Vernon News, asking them

[4] The actual words used by Judge Curran as to Respondent's assertion that the subpoenas were for a gag order was that Respondent's statement was an "inherently false statement" (Tr. 100)

[5] Judge Curran called Respondent's explanation 'for failure to serve copies of the subpoenas on opposing counsel as 'totally bizzare ." (Tr. 100)

to bring any video taken of the hearing held on March 19, 2007.

On May 3, 2007, in the same case of *Pullins v. Collier*, which had been in suspension, and then dismissed (Civ. R. 41A) by Respondent and with the only relevant matter pending in that case being the May 31, 2007 hearing wherein Respondent was to come into court and explain to Judge Curran why he had issued the two subpoenas on December 26, 2007, which were an apparent abuse of process, Respondent issued eleven more subpoenas.

Each subpoena was duces tecum requiring copies of correspondence be presented to Respondent by May 12, 2007 for the May 31, 2007 hearing. These eleven subpoenas included the following:

1. Subpoena to Judge Thomas Curran (the presiding judge of the case), who was served with the subpoena at his home in Shaker Heights, Ohio, and wherein he was ordered to bring correspondence to or from three individuals, including the Knox County Prosecuting Attorney, who was the judge's statutory attorney before the court of appeals' action filed by Respondent;

2. Disciplinary Counsel;

3. The Attorney General of the State of Ohio;

4. The Ohio House of Representatives;

5. Thomas Collier the defendant in the suspended case;

6. The Knox County Prosecutor; and,

7. Mariam St. Jean, who was not a party to this lawsuit but was a party to another lawsuit in which Respondent was involved.

None of the eleven subpoenas had relevance to the pending matter. They can only be described as an abuse of process and an attempt by Respondent to obtain information of imagined conspiracies against him.

Respondent's conduct, as alleged in Count IV, violated the Code of Professional Responsibility, specifically:

1. DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation];

2. DR 1-102(A)(5) [conduct that is prejudicial to the administration of justice];

3. DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law]; and

4. DR 7-106(A) [disregard a standing rule of a tribunal].

Respondent's conduct, as alleged in Count IV, violated the Rules of Professional Conduct, specifically:

1. Prof. Cond. R. 3.1 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so];

2. Prof. Cond. R. 3.5(a)(6) [a lawyer shall not engage in undignified or discourteous conduct that is degrading to a tribunal];

3. Prof. Cond. R. 8.2(a) [a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard for the truth or falsity concerning the qualifications or integrity of &judicial officer...];

4. Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation;

5. Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and

6. Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

Respondent's conduct, as alleged in Count IV, violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.]

COUNT V

Bradley L. Wilhelm was a defendant in a criminal case in the Knox County Court of Common Pleas, case number 03CR010004. The case was presided over by Otho Eyster, Judge of the Court of Common Pleas, Knox County. Defendant's case was tried by a jury and the defendant was convicted of three counts of intimidation and one count of having weapons while under disability. All counts were felonies.

On October 15, 2004, the Court of Appeals for the Fifth Appellate District reversed appellant's conviction for the three counts of intimidation, and affirmed appellant's conviction for one count of having weapons while under disability.[6] Respondent, Scott Pullins, undertook the representation of Bradley L. Wilhelm, asking the court for restoration of firearms rights. On March 9, 2007, Respondent filed an affidavit of disqualification in the Supreme Court of Ohio, asking that Judge Otho Eyster be removed from the case. In the affidavit of disqualification Respondent states the following:

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[6] *State v. Wilhelm*, 5th Dist. Nos. 03-CA-25 and 03-CA-26, 2004-Ohio-5522.

1. The Honorable Otho Eyster "is prejudiced in this matter against the defendant, the defendant's family, and the defendant's legal counsel....

2. Legal counsel (Respondent) alleges that the Honorable Judge Otho Eyster has a clear bias in this case towards these individuals."

3. Respondent's "own observation of the behavior of the trial court, (Judge Eyster) and the statements made by other criminal defendant's (sic) to this legal counsel. Defendant and Defendant's counsel believe that the trial court has likely already met with the county prosecutor and/or the assistant county prosecutor ex parte and made up his mind to reject this request."[7]

4. "On May 12, 2006, while waiting in the courtroom prior to numerous criminal hearings, this legal counsel (Respondent) observed the County Prosecutor John Thatcher, Assistant County Prosecutor Rob Broeren, and Judge Eyster go into the Court's chambers prior to the hearings where

[7] No evidence of ex parte conversations was presented to this hearing panel. To the contrary, testimony elicited from Judge Eyster, the County Prosecutor, the Assistant County Prosecutor and the Respondent convinced the panel that this and the two following allegations are false.

they apparently discussed the pending criminal cases ex parte without any defendant or defense counsel allowed to participate."

5. "This legal counsel (Respondent) has witnessed these apparent ex parte discussions between the Court and the prosecutors on other occasions, but he cannot document the dates at this time. In addition, clients of this legal counsel have told me that they have observed this activity as a regular occurrence in Judge Eyster's courtroom"

6. "On July 21, 2006 this legal counsel (Respondent) overheard bits and pieces of a lengthy conversation between Judge Eyster and Judge Thomas Patrick Curran discussing the details of the case *Complete Comfort Systems v. Pullins, et al.*Judge Curran was appointed by this Court to replace Judge Eyster . . This legal counsel (Respondent) agreed to settle that litigation partly because he did not believe he could obtain a fair trial in front of Judge Curran because of the ex parte discussions, and this Court had replaced the Trial Judge once already." (Rel. Ex. 21)

On May 25, 2007, Chief Justice Moyer denied the affidavit of disqualification. In the Chief Justice's judgment entry he noted that the prosecuting attorney and assistant prosecuting attorney responded to the affidavit as well, and

they both denied holding any ex parte discussions with the Judge.

Both Judge Eyster and Judge Curran testified they did not have conversations about the details of the *Complete Comfort Systems v. Pullins* case. The panel finds this to be another false allegation by Respondent.[8]

Respondent's conduct as alleged in Count V , violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude towards the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.]

COUNT VI

On December 20, 2007, Respondent, as attorney for his wife and two other plaintiffs, filed a lawsuit against individuals associated with the Apple Valley Property Owners Association (AVPOA). The suit also named the AVPOA as a defendant. The action was filed in the Knox County Court of Common Pleas and was entitled Kathryn Elliott Pullins, et al. v. Jeff Harmer et al., Case No. 07 OT 12-0697. This case was assigned to Judge Otho Eyster.

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[8] Respondent could not testify to any specifics of the conversation he overheard that involved actual details of the case. Respondent testified the comments he heard Judge Eyster say were "Well, good luck on that one. You're going to have your hands full. You know, I . . . worked my best, I tried my hardest to try to get this thing settled but, you know, these guys are really hard-headed and stubborn" (Tr. 413)

On January 8, 2008, Respondent filed an affidavit of disqualification asking the Supreme Court of Ohio to remove Judge Eyster from the case. Respondent prepared the affidavit of disqualification and had it signed by his wife, Kathryn Pullins, as plaintiff.

In the affidavit of disqualification (Ex. 26), Respondent alleged that Judge Eyster is married to Ms. Carol Garner, who is employed as President and Director of the Foundation for the Knox County Community Hospital. Respondent further alleged that the AVPOA is the only non-governmental organization that has a representative as a voting member and/or director of the Foundation of the Knox County Community Hospital. Respondent claimed that the AVPOA, along with its officers, directors and employees which are parties to the within action, essentially employ and otherwise supervise the judge's spouse. Respondent further says that in addition, to the approximately thirty-six directors/voting members, it appears that nine of them are also members/owners of the AVPOA. Finally, of those nine member/owners of the AVPOA, two also are local attorneys, Jim Giles and Kim Rose, that regularly practice in front of Judge Eyster.

On February 12, 2008, the Supreme Court of Ohio denied the affidavit of disqualification. On November 10, 2008, Respondent filed an amended complaint in the case Kathryn Elliott Pullins, et al. v. Jeff Harmer et al., Case No. 07 OT 12-0697. The defendants in the lawsuit filed numerous motions to dismiss and for judgments on the pleadings. By January 27, 2009, the trial court had granted

defendants' motions to dismiss or for judgment on the pleadings on all but one of the counts of the amended complaint. Respondent promptly, on January 27, 2009, filed appeals on the dismissed counts. (Tr. 184)

On February 17, 2009, Respondent issued a subpoena (Rel. Ex. 62) to Judge Eyster's wife, Carol L. Gamer. The subpoena to Ms. Gamer was as Development Director for the Knox County Community Hospital and required her to produce the following documents to Respondent at his law office:

1. A list of all donors to the Knox County Community Hospital and the Foundation for the Knox Community Hospital for donors that have given or pledged since your first day of work until the present;

2. The list should include the name of the individual or entity that made the donation, the donation amount, the date of the donation or pledge, and the address of the donor.

Respondent was upset with Judge Eyster, believing that he had not received a fair trial because all of the counts in the complaint, but one, were dismissed. Through the subpoena of Carol Gamer, Respondent was attempting to resurrect the same allegations that Respondent had included in his affidavit of disqualification filed on January 8, 2008, and which had been denied by the Supreme Court on February 12, 2008.

On March 5, 2009 in the same case of *Pullins v. Harmer,* the plaintiff filed a "second request for order or recusal" asking Judge Eyster to recuse himself from all proceedings and stated "unless the court recuses themselves at this time, plaintiffs will be forced to file another affidavit of disqualification with the Chief Justice."

In the *Pullins v. Harmer* lawsuit at the time the Respondent issued the subpoena to Carol Gardner, fifteen of the sixteen counts had been dismissed and were on appeal to the Court of Appeals. The one remaining issue for the trial court was the refusal to provide records.

However, those records did not have anything to do with Carol Garner or the Knox County Community Hospital. Respondent's purpose was to file a new affidavit of disqualification with the Supreme Court and resurrect the same issues on which the Court had already ruled.

Respondent, in the first amended complaint filed in *Pullins v. Harmer,* included a count which listed attorney Donald W. Gregory, as a defendant. The complaint accused attorney Gregory of legal malpractice. Relator alleges in Count VI of the First Amended Complaint that the lawsuit against Attorney Gregory was initiated because Gregory reported Respondent's alleged misconduct in an affidavit to Disciplinary Counsel, which was the subject matter of Count III herein. Relator also alleges that the lawsuit against Donald W. Gregory was frivolous and not based on law or fact. The trial court did grant Attorney Gregory's motion to dismiss and motion for judgment on the pleadings and found that:

1. Plaintiffs have made no allegation that defendant Gregory or the AVPOA Board violated any Association rules or committed fraud;

2. Plaintiffs cannot state individual claims for malpractice against defendant Gregory;

3. The statute of limitations for malpractice action bars this lawsuit against defendant Gregory as a matter of law by res judicata;

4. As a matter of law, there is no separate claim for punitive damages.

Based upon the evidence presented to the panel, the panel does not find by clear and convincing evidence that including attorney Gregory in this lawsuit violated the Rules of Professional Conduct.

The other conduct of Respondent as alleged in Count VI violated the Rules of Professional Conduct, specifically:

1. Prof. Cond, R. 3.1 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so that is not frivolous];

2. Prof. Cond. R. 8.4(d){conduct that is prejudicial to the administration of justice];

3. Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

The panel does not find by clear and convincing evidence that Respondent's conduct as alleged in Count VI violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation], and recommends its dismissal.

COUNT VII

On June 14, 2005, Respondent and his wife, Kathryn Pullins, were named defendants in a lawsuit filed in the Mount Vernon Municipal Court, case number 05 CVH 556. This lawsuit was removed to the Knox County Court of Common Pleas. The case is captioned *Complete Comfort Systems Inc. v. Scott Pullins, et al.*, Case No. 05-BR-080348, and was assigned to Judge Otho Eyster. On January 12, 2006, Respondent prepared an affidavit of disqualification of Judge Eyster for Respondent's wife to sign. (Rel. Ex. 45)

In the affidavit of disqualification Respondent states, "Judge Otho Eyster has clearly violated Canon 3 (E)(1), (I)(a), (1)(c), (I)(d)(iv), and (2) of the Ohio Judicial Code of Conduct..." Chief Justice Thomas Moyer, on February 6, 2006, filed a judgment entry granting the affidavit of disqualification to avoid the appearance of impropriety and specifically stated, "While I see no evidence in the record before me to suggest that Judge Eyster has shown any improper bias or

prejudice in favor of the plaintiff, I conclude that he should not remain as trial judge on the case."

Respondent's conduct in stating that Judge Eyster "has clearly violated" portions of Canon 3 (E) violated the Code of Professional Responsibility, specifically:

1. DR I -102(A)(5) [conduct that is prejudicial to the administration of justice];

2. DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law]; and,

3. DR 7-102(A)(5),(6) [knowingly make a false statement of law or fact, participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false].

Respondent's conduct by making the above referenced statement violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude towards the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance].

The panel does not find by clear and convincing evidence that Respondent violated DR 1-102(A)(4) [conduct involving dishonesty, fraud deceit, or misrepresentation] in Count VII, and recommends its dismissal.

MITIGATION

The panel finds, pursuant to BCGD Proc.Reg. 10(B)(2), that the following matters in mitigation are present:

a. Absence of a prior disciplinary record. Respondent has received no prior discipline from the Supreme Court.

b. Full and free disclosure to disciplinary Board or cooperative attitude toward proceedings. Respondent was cooperative throughout the process and very professional and respectful during the hearing on the merits.

Respondent did submit a number of letters and notes from clients, friends, and collegues relating to his character or reputation. The panel does not find that these letters address the type of activity that is the subject matter of the disciplinary complaint, and they have limited value as a mitigating factor.

AGGRAVATION

The panel finds, pursuant to BCGD Proc.Reg. 10(B)(1), that the following matters in aggravation are present:

a. Dishonest or selfish motive. The panel finds that Respondent's actions showed both a dishonest and selfish motive. Respondent

abused his position as a lawyer by issuing subpoenas to investigate those individuals who posted negative things about him on the Internet, or those individuals with whom he was personally involved in litigation. His allegations against judges and prosecutors, and his explanation of his abuse of process were false and dishonest.

b. Pattern of misconduct. The panel finds Respondent, over a period of years, served subpoenas for his own personal interests; repeatedly made false allegations about judges, prosecutors and assistant prosecutors; and otherwise used his position as a lawyer as a license to harass.

c. Multiple offenses. Respondent's pattern of conduct was repeated in numerous cases.

    a. Refusal to acknowledge wrongful nature of conduct. Respondent states that he has apologized and recognizes the wrongfulness of his act. The panel finds such apology and acknowledgment is primarily lip-service. The panel's ability to describe Respondent's lack of understanding of the wrongfulness of his acts is almost beyond its power to describe. Respondent's apology to Judge Curran lacked sincerity. When Respondent was asked to explain why he issued eleven subpoenas to individuals in an

apparent abuse of process, including subpoenaing a person who was a party to another lawsuit to either harass or obtain an advantage in that lawsuit. Respondent testified that such subpoenas were necessary. Because "I was going to show the Court that I wasn't the one abusing the process here."[9]

Respondent also testified that he did not think it was disrespectful to say that a judge has already made up his mind, is no longer acting impartially, and has violated the Canons. Further, Respondent felt that he was not being reckless towards the truth when he stated that a judge and prosecutors had met ex parte to discuss the criminal case even though Respondent had no evidence that such ex parte discussions occurred. The demeanor and testimony of Respondent lead the panel to fwd that Respondent believed his actions were justified and it is the judges and the other individuals, of whom he complains, who are wrong.

d. Vulnerability of and resulting harm to victims of the misconduct. The panel finds judges' and prosecutors' reputations were harmed by Respondent's conduct. Those

[9] Tr. 591.

individuals who had nothing to do with a case and who were subpoenaed were put under stress and inconvenience. One of the lay persons subpoenaed, Carol Garner, demonstrated to the panel that receiving the subpoena at her place of employment caused her significant emotional distress. The infliction of such distress did not seem to concern Respondent.

PANEL RECOMMENDATION

The panel finds that the case law submitted by Relator is more on point than the case law submitted by Respondent. In *Gardner,* the Supreme Court of Ohio stated, "Unfounded attacks against the integrity of the judiciary require an actual suspension from the practice of law."

Gardner's actions involved unfounded attacks against the integrity of the judiciary on one occasion in one brief. Gardner received a six month suspension. In *Frost,* the respondent was sanctioned for filing false accusations of bias and corruption against judges and a county prosecutor, and also persisted in pursuing a baseless defamation suit.

Frost was charged with three counts of professional misconduct involving many of the same ethical violations as Respondent. The Supreme Court of Ohio indefinitely suspended Frost from the practice of law in Ohio.

In *Baumgartner,* the respondent was disbarred from the practice of law for making numerous and unfounded accusations of criminal

and unethical activity against private individuals and public officials, including a prosecutor. The Court noted that Baumgartner made countless accusations for which she had no credible proof.

The panel finds that the number of factors in aggravation outweighs the factors found in mitigation. The majority of the panel agrees with the recommendations of Relator, and recommends that Scott Allen Pullins be indefinitely suspended from the practice of law in Ohio.

Panel member Judge Joseph Vukovich dissented from some of the majority's findings of fact, conclusions of law and its recommended sanction. His dissent is set out below.

DISSENT

As I differ from the panel members in the majority as to some of their findings of fact, conclusions of law, and the proposed sanction, I respectfully dissent from their report relative to the following matters:

1. In Count III, I would strike a finding of a violation of DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]:

In support, please note the following exchange between counsel for Relator and Respondent:

"Q. * * * Your motives were not dishonest, I think, so much as expedient in terms of the affidavit.

A, Yes."

Deposition of Respondent, Oct. 8, 2008, p. 63, L 17-21.

2. In Count IV, I would strike a finding of a violation of DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]:

For support, it is maintained that overzealous representation, abuse of process, and recklessness is not synonymous with a DR 1-102(A)(4) violation.

3. On matters in aggravation, I find no dishonest or selfish motive by Respondent, and no refusal to acknowledge the wrongful nature of his conduct.

I would amend the panel recommendation from an indefinite suspension to a two year suspension, with 18 months stayed.

SUPPORT FOR THE FOREGOING

While it is difficult to divorce our personal admiration for the respected jurist at the center of most of the charges against Respondent, we clearly have a duty to do so.

Respondent, contrary to his bizarre behavior giving rise to these proceedings, was articulate, respectful, cooperative and showed skill at the hearing. Contrary to the report, I found him to also be generally remorseful for his conduct when he

was a relatively inexperienced attorney. In support, consider the following comments of the Respondent at his deposition (Oct. 8, 2008):

pp. 46-47,

"Q. Would you agree that was intemperate and perhaps uncalled for under the circumstances?

A. I think it was uncalled for. I think the longer I do this . . . and look at stuff I've written in 2004, or 2005, 2006, I mean it just makes me cringe.

B. at 51: I'm ashamed and embarrassed from that "

Q. Do you think you might owe the Judge an apology for at least some of this?

[p. 47] "I do; I'd love to have an opportunity to apologize to him [Judge Eyster]."

c) at p. 55: "Q * * * so you acknowledge that the conduct in 2005 and 2006, some of this conduct complained about by Judge Eyster was over the top. It wasn't appropriate.
* * *

A. "Yes, I agree with that."

Finally, in support of the sanction I feel is more appropriate than the one recommended by the panel, I offer a comparison with a case with more

egregious behavior. See *Columbus Bar Assn.* v. *Vogel*, I 17 Ohio St.3d 108, 2008-Ohio-504.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 9, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the majority of the Panel and recommends that Respondent, Scott Pullins, be suspended from the practice of law indefinitely in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.